

tions a deemed dividend from a 936 corporation, and for taxable years beginning after December 31, 1990, in its application to other income of foreign operating corporations deemed dividends. Section 30, paragraph (k) is effective for taxable years beginning after December 31, 1987. As used in this section, a "deemed dividend" has the meaning described in section 30, paragraph (g).

Sections 10, 11, clauses (2) and (3), 12, except for clause (11), 13, 15 to 18, 20, 21, 23, 25, 29 insofar as it refers to companies subject to the occupation tax, 34, 35, 39, 41 to 49, and 56, paragraph (d), are effective for taxable years beginning after December 31, 1986. Section 22 is effective for taxable years beginning after December 31, 1986, except that the part relating to the apportionment of the exemption amount among members of a unitary group is effective for taxable years beginning after December 31, 1987. Section 27 is effective for taxable years beginning after December 31, 1986, except that the part relating to the allowance of a net operating loss incurred in any taxable year to the extent of the apportionment ratio of the loss year is effective for taxable years beginning after December 31, 1987. Section 28 is effective for losses incurred in taxable years beginning after December 31, ~~1986~~ 1987, and is repealed effective for taxable years beginning after December 31, 1993. Sections 6, 50, and 55 are effective the day following final enactment. Sections 51 and 52 are effective for ores mined after December 31, 1989. Section 53 is effective for ores mined after December 31, 1986, and before January 1, 1990. Section 54 is effective for ore mined after December 31, 1986. Section 56, paragraph (a), is effective for ores mined after December 31, 1989. Section 56, paragraph (b), is effective for ores mined after December 31, 1986, and supersedes the repealer in Laws 1987, chapter 268, article 9, section 43.

Sec. 10. REPEALER.

Minnesota Statutes 1988, section 52.22, is repealed.

Sec. 11. EFFECTIVE DATE.

Sections 1 to 8 are effective for taxable years beginning after December 31, 1986, except that the elimination of clause (1) in section 290.371, subdivision 1, is effective for taxable years beginning after December 31, 1988.

Presented to the governor April 7, 1989

Signed by the governor April 7, 1989, 4:54 p.m.

CHAPTER 28—H.F.No. 214

An act relating to taxation; making technical corrections and clarifications to individual income and corporate franchise taxes; updating references to the Internal Revenue Code; imposing a tax and providing for withholding of certain payments to nonresidents; requiring

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surety payment by out-of-state contractors; amending Minnesota Statutes 1988, sections 290.01, subdivisions 4, 7, 19, 19a, 19b, 19c, 19d, 19e, and 19f; 290.06, subdivisions 2c and 22; 290.067, subdivision 1; 290.0802, subdivisions 1 and 2; 290.095, subdivision 9; 290.17, subdivisions 1 and 2; 290.311, subdivision 1; 290.92, by adding subdivisions; and 291.005, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 290; repealing Minnesota Statutes 1988, section 290.01, subdivision 6a.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, section 290.01, subdivision 4, is amended to read:

Subd. 4. **CORPORATION.** The term "corporation" shall include every entity which is a corporation under section 7701(a)(3) or is treated as a corporation under section ~~851(g)~~ 851(h) or 7704 of the Internal Revenue Code of 1986, as amended through December 31, ~~1987~~ 1988, and financial institutions. A corporation's franchise is its authorization to exist and conduct business, whether created by legislation, by executive order, by a governmental agency, by contract or other private action, or by some combination thereof. Every corporation is deemed to have a corporate franchise. An entity described in section 646(b) of the Tax Reform Act of 1986, Public Law Number 99-514, as amended by section 1006(k) of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, shall be classified in the same manner for purposes of this chapter as it is for federal income tax purposes.

Sec. 2. Minnesota Statutes 1988, section 290.01, subdivision 7, is amended to read:

Subd. 7. **RESIDENT.** The term "resident" means (1) any individual domiciled in Minnesota, except that an individual is not a "resident" for the period of time that the individual is a "qualified individual" as defined in section 911(d)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1987, unless, during that period, a Minnesota homestead application is filed for property in which the individual has an interest; and (2) any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota, unless the individual or the spouse of the individual is in the armed forces of the United States, or the individual is covered under the reciprocity provisions in section 290.081.

For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state. Individuals shall keep adequate records to substantiate the days spent outside the state.

The term "abode" means a dwelling maintained by an individual, whether or not owned by the individual and whether or not occupied by the individual, and includes a dwelling place owned or leased by the individual's spouse.

Sec. 3. Minnesota Statutes 1988, section 290.01, subdivision 19, is amended to read:

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Subd. 19. **NET INCOME.** The term "net income" means the federal taxable income, as defined in section 63 of the Internal Revenue Code of 1986, as amended through the date named in this subdivision, incorporating any elections made by the taxpayer in accordance with the Internal Revenue Code in determining federal taxable income for federal income tax purposes, and with the modifications provided in subdivisions 19a to 19f.

In the case of a regulated investment company or a fund thereof, as defined in section 851(a) or ~~851(e)~~ 851(h) of the Internal Revenue Code, federal taxable income means investment company taxable income as defined in section 852(b)(2) of the Internal Revenue Code, except that:

(1) the exclusion of net capital gain provided in section 852(b)(2)(A) of the Internal Revenue Code does not apply; and

(2) the deduction for dividends paid under section 852(b)(2)(D) of the Internal Revenue Code must be applied by allowing a deduction for capital gain dividends and exempt-interest dividends as defined in sections 852(b)(3)(C) and 852(b)(5) of the Internal Revenue Code.

The Internal Revenue Code of 1986, as amended through December 31, 1986, shall be in effect for taxable years beginning after December 31, 1986. The provisions of sections 10104, 10202, 10203, 10204, 10206, 10212, 10221, 10222, 10223, 10226, 10227, 10228, 10611, 10631, 10632, and 10711 of the Omnibus Budget Reconciliation Act of 1987, Public Law Number 100-203, and the provisions of sections 1001, 1002, 1003, 1004, 1005, 1006, 1008, 1009, 1010, 1011, 1011A, 1011B, 1012, 1013, 1014, 1015, 1018, 2004, 3041, 4009, 6007, 6026, 6032, 6137, 6277, and 6282 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, shall be effective at the time they become effective for federal income tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1987, shall be in effect for taxable years beginning after December 31, 1987. The provisions of sections 4001, 4002, 4011, 5021, 5041, 5053, 5075, 6003, 6008, 6011, 6030, 6031, 6033, 6057, 6064, 6066, 6079, 6130, 6176, 6180, 6182, 6280, and 6281 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, shall become effective at the time they become effective for federal tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1988, shall be in effect for taxable years beginning after December 31, 1988.

Except as otherwise provided, references to the Internal Revenue Code in subdivisions 19a to ~~19f~~ 19g mean the code in effect for purposes of determining net income for the applicable year.

Sec. 4. Minnesota Statutes 1988, section 290.01, subdivision 19a, is amended to read:

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Subd. 19a. **ADDITIONS TO FEDERAL TAXABLE INCOME.** For individuals, estates, and trusts, there shall be added to federal taxable income:

(1)(i) interest income on obligations of any state other than Minnesota or a political or governmental subdivision, municipality, or governmental agency or instrumentality of any state other than Minnesota exempt from federal income taxes under the Internal Revenue Code or any other federal statute, and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, except the portion of the exempt-interest dividends derived from interest income on obligations of the state of Minnesota or its political or governmental subdivisions, municipalities, governmental agencies or instrumentalities, but only if the portion of the exempt-interest dividends from such Minnesota sources paid to all shareholders represents 95 percent or more of the exempt-interest dividends that are paid by the regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, or the fund of the regulated investment company as defined in section ~~851(a)~~ 851(h) of the Internal Revenue Code of 1986, making the payment; and

(2) the amount of income taxes paid or accrued within the taxable year under this chapter and income taxes paid to any other state or to any province or territory of Canada, to the extent allowed as a deduction under section 63(d) of the Internal Revenue Code, but the addition may not be more than the amount by which the itemized deductions as allowed under section 63(d) of the Internal Revenue Code exceeds the amount of the standard deduction as defined in section 63(c) of the Internal Revenue Code; and

(3) the capital gain amount of a lump sum distribution to which the special tax under section 1122(h)(3)(B)(ii) of the Tax Reform Act of 1986, Public Law Number 99-514, applies.

Sec. 5. Minnesota Statutes 1988, section 290.01, subdivision 19b, is amended to read:

Subd. 19b. **SUBTRACTIONS FROM FEDERAL TAXABLE INCOME.** For individuals, estates, and trusts, there shall be subtracted from federal taxable income:

(1) interest income on obligations of any authority, commission, or instrumentality of the United States to the extent includable in taxable income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) if included in federal taxable income, the amount of any overpayment of income tax to Minnesota or to any other state, for any previous taxable year, whether the amount is received as a refund or as a credit to another taxable year's income tax liability;

(3) the amount paid to others not to exceed \$650 for each dependent in

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grades kindergarten to 6 and \$1,000 for each dependent in grades 7 to 12, for tuition, textbooks, and transportation of each dependent in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363. As used in this clause, "textbooks" includes books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state. "Textbooks" does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship, nor does it include books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs. In order to qualify for the subtraction under this clause the taxpayer must elect to itemize deductions under section 63(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(4) to the extent included in federal taxable income, distributions from a qualified governmental pension plan, an individual retirement account, simplified employee pension, or qualified plan covering a self-employed person that represent a return of contributions that were included in Minnesota gross income in the taxable year for which the contributions were made but were deducted or were not included in the computation of federal adjusted gross income. The distribution shall be allocated first to return of contributions until the contributions included in Minnesota gross income have been exhausted. This subtraction applies only to contributions made in a taxable year prior to 1985;

(5) income as provided under section 290.0802; ~~and~~

(6) the amount of unrecovered accelerated cost recovery system deductions allowed under subdivision 19g; and

(7) to the extent included in federal adjusted gross income, income realized on disposition of property exempt from tax under section 290.491.

Sec. 6. Minnesota Statutes 1988, section 290.01, subdivision 19c, is amended to read:

Subd. 19c. **CORPORATIONS; ADDITIONS TO FEDERAL TAXABLE INCOME.** For corporations, there shall be added to federal taxable income:

(1) the amount of any deduction taken for federal income tax purposes for income, excise, or franchise taxes based on net income or related minimum taxes paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States;

(2) interest not subject to federal tax upon obligations of: the United States,

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its possessions, its agencies, or its instrumentalities; the state of Minnesota or any other state, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities; or the District of Columbia;

(3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(4) the amount of any windfall profits tax deducted under section 164 or 471 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(5) the amount of any net operating loss deduction taken for federal income tax purposes under section 172 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(6) the amount of any special deductions taken for federal income tax purposes under sections 241 to 247 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(7) losses from the business of mining, as defined in section 290.05, subdivision 1, clause (a), that are not subject to Minnesota income tax;

(8) the amount of any capital losses deducted for federal income tax purposes under sections 1211 and 1212 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(9) the amount of any charitable contributions deducted for federal income tax purposes under section 170 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(10) the exempt foreign trade income of a foreign sales corporation under sections 921(a) and 291 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(11) the amount of percentage depletion deducted under sections 611 through 614 and 291 of the Internal Revenue Code of ~~1986, as amended through December 31, 1987;~~

(12) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, the amount of the amortization deduction allowed in computing federal taxable income for those facilities; and

(13) the amount of any deemed dividend from a foreign operating corporation determined pursuant to section 290.17, subdivision 4, paragraph (g).

Sec. 7. Minnesota Statutes 1988, section 290.01, subdivision 19d, is amended to read:

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Subd. 19d. **CORPORATIONS; MODIFICATIONS DECREASING FEDERAL TAXABLE INCOME.** For corporations, there shall be subtracted from federal taxable income after the increases provided in subdivision 19c:

(1) the amount of foreign dividend gross-up added to gross income for federal income tax purposes under section 78 of the Internal Revenue Code;

(2) the decrease in salary expense for federal income tax purposes due to claiming the federal jobs credit under section 51 of the Internal Revenue Code;

(3) any dividend (not including any distribution in liquidation) paid within the taxable year by a national or state bank to the United States, or to any instrumentality of the United States exempt from federal income taxes, on the preferred stock of the bank owned by the United States or the instrumentality;

(4) amounts disallowed for intangible drilling costs due to differences between this chapter and the Internal Revenue Code in taxable years beginning before January 1, 1987, as follows:

(i) to the extent the disallowed costs are represented by physical property, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7, subject to the modifications contained in subdivision 19e; and

(ii) to the extent the disallowed costs are not represented by physical property, an amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section 290.09, subdivision 8;

(5) the deduction for capital losses pursuant to sections 1211 and 1212 of the Internal Revenue Code of 1986, as amended through December 31, 1987, except that:

(i) for capital losses incurred in taxable years beginning after December 31, 1986, capital loss carrybacks shall not be allowed;

(ii) for capital losses incurred in taxable years beginning after December 31, 1986, a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be allowed;

(iii) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryback to each of the three taxable years preceding the loss year, subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

(iv) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryover to each of the five taxable years succeeding the loss year to the extent such loss was not used in a prior taxable year and subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed;

(6) an amount for interest and expenses relating to income not taxable for

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federal income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or 291 of the Internal Revenue Code of 1986, as amended through December 31, 1987, in computing federal taxable income;

(7) in the case of mines, oil and gas wells, other natural deposits, and timber for which percentage depletion was disallowed pursuant to subdivision 19c, clause (11), a reasonable allowance for depletion based on actual cost. In the case of leases the deduction must be apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held in trust, the allowable deduction must be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the trust, or if there is no provision in the instrument, on the basis of the trust's income allocable to each;

(8) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7;

(9) the amount included in federal taxable income attributable to the credits provided in Minnesota Statutes 1986, section 273.1314, subdivision 9, or Minnesota Statutes, section 469.171, subdivision 6;

(10) amounts included in federal taxable income that are due to refunds of income, excise, or franchise taxes based on net income or related minimum taxes paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or a foreign country or possession of the United States to the extent that the taxes were added to federal taxable income under section 290.01, subdivision 19c, clause (1), in a prior taxable year; and

(11) the following percentage of royalties, fees, or other like income accrued or received from a foreign operating corporation or a foreign corporation which is part of the same unitary business as the receiving corporation:

Taxable Year	
Beginning After	Percentage
December 31, 1988	50 percent
December 31, 1990	80 percent.

Sec. 8. Minnesota Statutes 1988, section 290.01, subdivision 19e, is amended to read:

Subd. 19e. **DEPRECIATION MODIFICATIONS FOR CORPORATIONS.** In the case of corporations, a modification shall be made for the accelerated cost recovery system. The allowable deduction for the accelerated cost recovery system is the same amount as provided in section 168 of the Internal Revenue Code with the following modifications. The modifications apply to

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taxable years beginning after December 31, 1986, and to property for which deductions under the Tax Reform Act of 1986, Public Law Number 99-514, are elected or apply.

(a) For property placed in service after December 31, 1980, and before January 1, 1987, 40 percent of the allowance pursuant to section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1985, for 15-, 18-, or 19-year real property shall not be allowed and for all other property 20 percent shall not be allowed.

(b) For property placed in service after December 31, 1987, no modification shall be made.

(c) For property placed in service after July 31, 1986, and before January 1, 1987, for which the taxpayer elects the deduction pursuant to section 203 of the Tax Reform Act of 1986, Public Law Number 99-514, and for property placed in service after December 31, 1986, and before January 1, 1988, 15 percent of the allowance pursuant to section 168 of the Internal Revenue Code of 1986 shall not be allowed.

(d) For property placed in service after December 31, 1980, and before January 1, 1987, for which the taxpayer elects to use the straight line method provided in section 168(b)(3), (f)(12), or (j)(1) or a method provided in section 168(e)(2) of the Internal Revenue Code of 1986, as amended through December 31, 1986, but excluding property for which the taxpayer elects the deduction pursuant to section 203 of the Tax Reform Act of 1986, Public Law Number 99-514, the modifications provided in paragraph (a) do not apply.

(e) For property subject to the modifications contained in paragraphs (a) and (c) and Minnesota Statutes 1986, section 290.09, subdivision 7, clause (c), the following modification shall be made after the entire amount of the allowable deduction has been allowed for federal tax purposes for that property under the provisions of section 168 of the Internal Revenue Code of 1986, as amended through December 31, 1987. The remaining depreciable basis in those assets for Minnesota purposes, including the amount of any basis reduction to reflect the investment tax credit for federal purposes under sections 48(q) and 49(d) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall be a depreciation allowance computed using the straight line method over the following number of years:

- (1) three-year property, one year;
- (2) five-year and seven-year property, two years;
- (3) ten-year property, five years; and
- (4) all other property, seven years.

(f) For property placed in service after December 31, 1987, the remaining depreciable basis for Minnesota purposes that is attributable to the basis reduc-

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tion for federal purposes to reflect the investment tax credit under sections 48(q) and 49(d) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall be allowed as a deduction in the first taxable year after the entire amount of the allowable deduction for that property under the provisions of section 168 of the Internal Revenue Code of 1986, has been allowed, except that where the straight line method provided in section 168(b)(3) is used, the deduction provided in this clause shall be allowed in the last taxable year in which an allowance for depreciation is allowed for that property.

(g) For qualified timber property for which the taxpayer made an election under section 194 of the Internal Revenue Code of 1986, the remaining depreciable basis for Minnesota purposes is allowed as a deduction in the first taxable year after the entire allowable deduction has been allowed for federal tax purposes.

(h) The basis of property to which section 168 of the Internal Revenue Code applies is its basis as provided in this chapter including the modifications provided in this subdivision and in Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c). The recapture tax provisions provided in sections 1245 and 1250 of the Internal Revenue Code of 1986, as amended through December 31, 1987, apply but must be calculated using the basis provided in the preceding sentence.

(i) The basis of an asset acquired in an exchange of assets, including an involuntary conversion, is the same as its federal basis under the provisions of the Internal Revenue Code of 1986, except that the difference in basis due to the modifications in this subdivision and in Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c), is a deduction as provided in paragraph (e).

Sec. 9. Minnesota Statutes 1988, section 290.01, subdivision 19f, is amended to read:

Subd. 19f. **BASIS MODIFICATIONS AFFECTING GAIN OR LOSS ON DISPOSITION OF PROPERTY.** (a) For individuals, estates, and trusts, the basis of property is its adjusted basis for federal income tax purposes except as set forth in paragraphs (f) and (g). For corporations, the basis of property is its adjusted basis for federal income tax purposes, without regard to the time when the property became subject to tax under this chapter or to whether out-of-state losses or items of tax preference with respect to the property were not deductible under this chapter, except that the modifications to the basis for federal income tax purposes set forth in paragraphs (b) to (j) are allowed to corporations, and the resulting modifications to federal taxable income must be made in the year in which gain or loss on the sale or other disposition of property is recognized.

(b) The basis of property shall not be reduced to reflect federal investment tax credit.

(c) The basis of property subject to the accelerated cost recovery system

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under section 168 of the Internal Revenue Code shall be modified to reflect the modifications in depreciation with respect to the property provided for in subdivision 19e. For certified pollution control facilities for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, the basis of the property must be increased by the amount of the amortization deduction not previously allowed under this chapter.

(d) For property acquired before January 1, 1933, the basis for computing a gain is the fair market value of the property as of that date. The basis for determining a loss is the cost of the property to the taxpayer less any depreciation, amortization, or depletion, actually sustained before that date. If the adjusted cost exceeds the fair market value of the property, then the basis is the adjusted cost regardless of whether there is a gain or loss.

(e) The basis is reduced by the allowance for amortization of bond premium if an election to amortize was made pursuant to Minnesota Statutes 1986, section 290.09, subdivision 13, and the allowance could have been deducted by the taxpayer under this chapter during the period of the taxpayer's ownership of the property.

(f) For assets placed in service before January 1, 1987, corporations, partnerships, or individuals engaged in the business of mining ores other than iron ore or taconite concentrates subject to the occupation tax under chapter 298 must use the occupation tax basis of property used in that business.

(g) For assets placed in service before January 1, 1990, corporations, partnerships, or individuals engaged in the business of mining iron ore or taconite concentrates subject to the occupation tax under chapter 298 must use the occupation tax basis of property used in that business.

(h) In applying the provisions of sections 301(c)(3)(B), 312(f) and (g), and 316(a)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1987, the dates December 31, 1932, and January 1, 1933, shall be substituted for February 28, 1913, and March 1, 1913, respectively.

(i) In applying the provisions of section 362(a) and (c) of the Internal Revenue Code of 1986, as amended through December 31, 1987, the date December 31, 1956, shall be substituted for June 22, 1954.

(j) The basis of property shall be increased by the amount of intangible drilling costs not previously allowed due to differences between this chapter and the Internal Revenue Code.

(k) The adjusted basis of any corporate partner's interest in a partnership is the same as the adjusted basis for federal income tax purposes modified as required to reflect the basis modifications set forth in paragraphs (b) to (j). The adjusted basis of a partnership in which the partner is an individual, estate, or trust is the same as the adjusted basis for federal income tax purposes modified as required to reflect the basis modifications set forth in paragraphs (f) and (g).

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(l) The modifications contained in paragraphs (b) to (j) also apply to the basis of property that is determined by reference to the basis of the same property in the hands of a different taxpayer or by reference to the basis of different property.

Sec. 10. Minnesota Statutes 1988, section 290.06, subdivision 2c, is amended to read:

Subd. 2c. **SCHEDULES OF RATES FOR INDIVIDUALS, ESTATES, AND TRUSTS.** (a) The income taxes imposed by this chapter upon married individuals filing joint returns and surviving spouses as defined in section 2(a) of the Internal Revenue Code of 1986 as amended through December 31, 1987, must be computed by applying to their taxable net income the following schedule of rates:

if taxable income is:	the tax is:
not over \$19,000	6 percent
over \$19,000	\$1,140 plus 8 percent of the excess over \$19,000

plus an amount computed using the following schedule of rates:

if taxable income is:	the tax is:
over \$75,500, but not over \$165,000	0.5 percent of the excess over \$75,500
over \$165,000	\$447.50.

Married individuals filing separate returns, estates, and trusts must compute their income tax by applying the above rates to their taxable income, except that the income brackets will be one-half of the above amounts. In the case of married individuals filing separately, the additional 0.5 percent tax provided in this subdivision shall be applied to taxable income over \$37,750, but not over \$127,500.

(b) The income taxes imposed by this chapter upon unmarried individuals must be computed by applying to taxable net income the following schedule of rates:

if taxable income is:	the tax is:
not over \$13,000	6 percent
over \$13,000	\$780 plus 8 percent of the excess over \$13,000

plus an amount computed using the following schedule of rates:

if taxable income is:	the tax is:
over \$42,700, but not over \$93,000	0.5 percent of the excess over \$42,700
over \$93,000	\$251.50.

(c) The income taxes imposed by this chapter upon unmarried individuals qualifying as a head of household as defined in section 2(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, must be computed by applying to taxable net income the following schedule of rates:

if taxable income is:	the tax is:
not over \$16,000	6 percent

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over \$16,000	\$960 plus 8 percent of the excess over \$16,000
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plus an amount computed using the following schedule of rates:

if taxable income is:	the tax is:
over \$64,300, but not over \$135,000	0.5 percent of the excess over \$64,300
over \$135,000	\$353.50.

(d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year is less than an amount determined by the commissioner must be computed in accordance with tables prepared and issued by the commissioner of revenue based on income brackets of not more than \$100. The amount of tax for each bracket shall be computed at the rates set forth in this subdivision, provided that the commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case it may be increased to \$1.

(e) An individual who is not a Minnesota resident for the entire year must compute the individual's Minnesota income tax as provided in this subdivision. After the application of the nonrefundable credits provided in this chapter, the tax liability must then be multiplied by a fraction in which:

(1) The numerator is the individual's Minnesota source federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, as amended through December 31, 1987, after applying the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

(2) the denominator is the individual's federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, as amended through December 31, 1987, increased by the addition required for interest income from non-Minnesota state and municipal bonds under section 290.01, subdivision 19a, clause (1).

(f) Any individual who has income which is included in the computation of federal adjusted gross income but is not subject to tax by Minnesota other than income specifically allowed as a subtraction under section 290.01, subdivision 19b, shall compute the tax in the same manner described in paragraph (e). The numerator of the fraction under paragraph (e) is the individual's Minnesota source federal adjusted gross income reduced by the income not subject to Minnesota tax and the denominator is the federal adjusted gross income.

Sec. 11. Minnesota Statutes 1988, section 290.06, subdivision 22, is amended to read:

Subd. 22. **CREDIT FOR TAXES PAID TO ANOTHER STATE.** (a) A taxpayer who is liable for taxes on or measured by net income to another state or province or territory of Canada, as provided in paragraphs (b) through (f), upon income allocated or apportioned to Minnesota, is entitled to a credit for

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the tax paid to another state or province or territory of Canada if the tax is actually paid in the taxable year or a subsequent taxable year. A taxpayer who is a resident of this state pursuant to section 290.01, subdivision 7a 7, clause (b) (2), and who is subject to income tax as a resident in the state of the individual's domicile is not allowed this credit unless the state of domicile does not allow a similar credit.

(b) For an individual, estate, or trust, the credit is determined by multiplying the tax payable under this chapter by the ratio derived by dividing the income subject to tax in the other state or province or territory of Canada that is also subject to tax in Minnesota while a resident of Minnesota by the taxpayer's federal adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1986, as amended through December 31, ~~1987~~ 1988, modified by the addition required by section 290.01, subdivision 19a, clause (1) and the subtraction allowed by section 290.01, subdivision 19b, clause (1), to the extent the income is allocated or assigned to Minnesota under sections 290.081 and 290.17.

(c) If the taxpayer is an athletic team that apportions all of its income under section 290.17, subdivision 5, paragraph (a) (c), the credit is determined by multiplying the tax payable under this chapter by the ratio derived from dividing the total net income subject to tax in the other state or province or territory of Canada by the taxpayer's Minnesota taxable income.

(d) The credit determined under paragraph (b) or (c) shall not exceed the amount of tax so paid to the other state or province or territory of Canada on the gross income earned within the other state or province or territory of Canada subject to tax under this chapter, nor shall the allowance of the credit reduce the taxes paid under this chapter to an amount less than what would be assessed if such income amount was excluded from taxable net income.

(e) In the case of the tax assessed on a lump sum distribution under section 290.032, the credit allowed under paragraph (a) is the tax assessed by the other state or province or territory of Canada on the lump sum distribution that is also subject to tax under section 290.032, and shall not exceed the tax assessed under section 290.032. To the extent the total lump sum distribution defined in section 290.032, subdivision 1, includes lump sum distributions received in prior years or is all or in part an annuity contract, the reduction to the tax on the lump sum distribution allowed under section 290.032, subdivision 2, includes tax paid to another state that is properly apportioned to that distribution.

(f) If a Minnesota resident reported an item of income to Minnesota and is assessed tax in such other state or province or territory of Canada on that same income after the Minnesota statute of limitations has expired, the taxpayer shall receive a credit for that year under paragraph (a), notwithstanding any statute of limitations to the contrary. The claim for the credit must be submitted within one year from the date the taxes were paid to the other state or province or territory of Canada. The taxpayer must submit sufficient proof to show entitlement to a credit.

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Sec. 12. Minnesota Statutes 1988, section 290.067, subdivision 1, is amended to read:

Subdivision 1. **AMOUNT OF CREDIT.** A taxpayer may take as a credit against the tax due from the taxpayer and a spouse, if any, under this chapter an amount equal to the dependent care credit for which the taxpayer is eligible pursuant to the provisions of section 21 of the Internal Revenue Code subject to the limitations provided in subdivision 2: except that in determining whether the child qualified as a dependent, income received as an aid to families with dependent children grant or allowance to or on behalf of the child must not be taken into account in determining whether the child received more than half of the child's support from the taxpayer.

If the taxpayer is not required and does not file a federal individual income tax return for the tax year, no credit is allowed for any amount paid to any person unless:

(1) the name, address, and taxpayer identification number of the person are included on the return claiming the credit; or

(2) if the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence does not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information required.

In the case of a nonresident ~~or~~ part-year resident, or person whose tax is computed under section 290.06, subdivision 2c, paragraph (f), the credit determined under section 21 of the Internal Revenue Code must be allocated based on the ratio by which the earned income of the claimant and the claimant's spouse from Minnesota sources bears to the total earned income of the claimant and the claimant's spouse.

Sec. 13. Minnesota Statutes 1988, section 290.0802, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For purposes of this section, the following terms have the meanings given.

(a) "Adjusted gross income" means federal adjusted gross income as used in section 22(d) of the Internal Revenue Code for the taxable year plus the ordinary income portion of a lump sum distribution as defined in section ~~407(e)~~ 402(e) of the Internal Revenue Code.

(b) "Disability income" means disability income as defined in section 22(c)(2)(B)(iii) of the Internal Revenue Code.

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(c) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1987.

(d) "Nontaxable retirement and disability benefits" means the amount of pension, annuity, or disability benefits that would be included in the reduction under section 22(c)(3) of the Internal Revenue Code, but excluding tier one railroad retirement benefits.

(e) "Qualified individual" means a qualified individual as defined in section 22(b) of the Internal Revenue Code.

Sec. 14. Minnesota Statutes 1988, section 290.0802, subdivision 2, is amended to read:

Subd. 2. **SUBTRACTION.** (a) A qualified individual is allowed a subtraction from federal taxable income ~~equal to the lesser of federal taxable income or~~ for the individual's subtraction base amount. The excess of the subtraction base amount over ~~federal~~ the taxable net income computed without regard to the subtraction for the elderly or disabled under section 290.01, subdivision 19b, clause (5), may be used to reduce the amount of a lump sum distribution subject to tax under section 290.032.

(b)(1) The initial subtraction base amount equals

(i) \$10,000 for a married taxpayer filing a joint return if a spouse is a qualified individual,

(ii) \$8,000 for a single taxpayer, and

(iii) \$5,000 for a married taxpayer filing a separate federal return.

(2) The qualified individual's initial subtraction base amount, then, must be reduced by the sum of nontaxable retirement and disability benefits and one-half of the amount of adjusted gross income in excess of the following thresholds:

(i) \$15,000 for a married taxpayer filing a joint return if both spouses are qualified individuals,

(ii) \$12,000 for a single taxpayer or for a married couple filing a joint return if only one spouse is a qualified individual, and

(iii) \$7,500 for a married taxpayer filing a separate federal return.

(3) In the case of a qualified individual who is under the age of 65, the maximum amount of the subtraction base may not exceed the taxpayer's disability income.

(4) The resulting amount is the subtraction base amount.

Sec. 15. Minnesota Statutes 1988, section 290.095, subdivision 9, is amended to read:

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Subd. 9. **SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS CARRYBACKS.** For the purposes of sections 290.46 and 290.50 if the claim for refund relates to an overpayment attributable to a net operating loss carryback under this section, in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period shall be that period which ends with the expiration of the 15th day of the 46th month following the end of the taxable year of the net operating loss which results in such carryback, plus any extension of time granted for filing the return, but only if the return was filed within the extended time. ~~During this extended period, for taxable years beginning before January 1, 1985, married individuals who elected to file separate returns or a combined return may change their election and file a joint return.~~

Sec. 16. Minnesota Statutes 1988, section 290.17, subdivision 1, is amended to read:

Subdivision 1. **SCOPE OF ALLOCATION RULES.** (a) The income of resident individuals is not subject to allocation outside this state. The allocation rules apply to nonresident individuals, estates, trusts, nonresident partners of partnerships, nonresident shareholders of corporations having a valid election in effect under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987, and all corporations not having such an election in effect. If a partnership or corporation would not otherwise be subject to the allocation rules, but conducts a trade or business that is part of a unitary business involving another legal entity that is subject to the allocation rules, the partnership or corporation is subject to the allocation rules.

(b) Expenses, losses, and other deductions (referred to collectively in this paragraph as "deductions") must be allocated along with the item or class of gross income to which they are definitely related for purposes of assignment under this section or apportionment under section 290.191, 290.20, 290.35, or 290.36. Deductions not definitely related to any item or class of gross income are assigned to the taxpayer's domicile.

(c) The application of the allocation rules as they apply to income, gains, losses, deductions, or credits of (1) a partner's distributable share from a partnership under section 290.31, subdivision 4; (2) a shareholder's distributable share from an S corporation provided in section 1366 of the Internal Revenue Code of 1986, as amended through December 31, 1988; (3) a beneficiary's distributable share from an estate or trust as provided in section 290.23, subdivision 9; or (4) the shareholders of regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits as provided in subchapter M of the Internal Revenue Code of 1988, as amended through December 31, 1988, shall be determined by the resident status of the partner, beneficiary, or shareholder at the end of the taxable year of the partnership, estate or trust, or corporation.

Sec. 17. Minnesota Statutes 1988, section 290.17, subdivision 2, is amended to read:

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Subd. 2. **INCOME NOT DERIVED FROM CONDUCT OF A TRADE OR BUSINESS.** The income of a taxpayer subject to the allocation rules that is not derived from the conduct of a trade or business must be assigned in accordance with paragraphs (a) to (f):

(a)(1) Subject to paragraphs (a)(2) and (a)(3), income from labor or personal or professional services is assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources is treated as income from sources without this state.

Severance pay shall be considered income from labor or personal or professional services.

(2) In the case of an individual who is a nonresident of Minnesota and who is an athlete or entertainer, income from compensation for labor or personal services performed within this state shall be determined in the following manner:

(i) The amount of income to be assigned to Minnesota for an individual who is a nonresident salaried athletic team employee shall be determined by using a fraction in which the denominator contains the total number of days in which the individual is under a duty to perform for the employer, and the numerator is the total number of those days spent in Minnesota; and

(ii) The amount of income to be assigned to Minnesota for an individual who is a nonresident, and who is an athlete or entertainer not listed in clause (i), for that person's athletic or entertainment performance in Minnesota shall be determined by assigning to this state all income from performances or athletic contests in this state.

(3) For purposes of this section, amounts received by a nonresident from the United States, its agencies or instrumentalities, the Federal Reserve Bank, the state of Minnesota or any of its political or governmental subdivisions, or a Minnesota volunteer firefighters' relief association, by way of payment as a pension, public employee retirement benefit, or any combination of these, or as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 408, or 409, or as defined in section 403(b) or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1987, are not considered income derived from carrying on a trade or business or from performing personal or professional services in Minnesota, and are not taxable under this chapter.

(b) Income or gains from tangible property located in this state that is not employed in the business of the recipient of the income or gains must be assigned to this state.

(c) Except upon the sale of a partnership interest or the sale of stock of an S corporation, income or gains from intangible personal property not employed in the business of the recipient of the income or gains must be assigned to this

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state if the recipient of the income or gains is a resident of this state or is a resident trust or estate.

Gain on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in this state to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than 50 percent of the value of the partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

Gain on the sale of stock held in an S corporation is allocable to this state in the ratio of the original cost of tangible property of the S corporation within this state to the original cost of tangible property of the S corporation everywhere.

Gain on the sale of goodwill or income from a covenant not to compete that is connected with a business operating all or partially in Minnesota is allocated to this state to the extent that the income from the business in the year preceding the year of sale was assignable to Minnesota under subdivision 3.

(d) Income from the operation of a farm shall be assigned to this state if the farm is located within this state and to other states only if the farm is not located in this state.

(e) Income from winnings on Minnesota pari-mutuel betting tickets and lawful gambling as defined in section 349.12, subdivision 2, conducted within the boundaries of the state of Minnesota shall be assigned to this state.

(f) All items of gross income not covered in paragraphs (a) to (e) and not part of the taxpayer's income from a trade or business shall be assigned to the taxpayer's domicile.

Sec. 18. Minnesota Statutes 1988, section 290.311, subdivision 1, is amended to read:

Subdivision 1. **PARTNERS.** (a) Partner's modifications. In determining gross income and Minnesota taxable income of a partner, any modification described in section 290.01, subdivisions ~~20~~ 19 to ~~20f~~ 19f, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates.

(b) Character of items. Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this section which it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

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(c) Minnesota tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the effect of such provision is the avoidance or evasion of tax under this section, the partner's distributive share of such item, and any modifications required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Sec. 19. Minnesota Statutes 1988, section 290.92, is amended by adding a subdivision to read:

Subd. 4b. WITHHOLDING BY PARTNERSHIPS. (a) A partnership shall deduct and withhold a tax as provided in paragraph (b) when the partnership pays or credits amounts to any of its nonresident individual partners on account of their distributive shares of partnership income for a taxable year of the partnership.

(b) The amount of tax withheld is determined by multiplying the partner's distributive share allocable to Minnesota under section 290.17, paid or credited during the taxable year by the highest rate used to determine the income tax liability for an individual under section 290.06, subdivision 2c, except that the amount of tax withheld may be determined based on tables provided by the commissioner if the partner submits a withholding exemption certificate under subdivision 5.

(c) A partnership required to deduct and withhold tax under this subdivision shall file a return with the commissioner. The tax required to be deducted and withheld during that year must be paid with the return. The return and payment is due on or before the due date specified for filing the partnership return under section 290.42.

(d) A partnership required to withhold and remit tax under this subdivision is liable for payment of the tax to the commissioner, and a person having control of or responsibility for the withholding of the tax or the filing of returns due under this subdivision is personally liable for the tax due. The commissioner may reduce or abate the tax withheld under this subdivision if the partnership had reasonable cause to believe that no tax was due under this section.

(e) Notwithstanding paragraph (a), a partnership is not required to deduct and withhold tax for a nonresident partner if:

(1) the partner elects to have the tax due paid as part of the partnership's composite return under section 290.39, subdivision 5;

(2) the partner has Minnesota assignable federal adjusted gross income from the partnership of less than \$1,000; or

(3) the partnership is liquidated or terminated, the income was generated by a transaction related to the termination or liquidation, and no cash or other property was distributed in the current or prior taxable year.

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(f) For purposes of subdivisions 6, paragraph (1)(c), 6a, 7, 11, and 15, a partnership is considered an employer.

Sec. 20. Minnesota Statutes 1988, section 290.92, is amended by adding a subdivision to read:

Subd. 4c. WITHHOLDING BY SMALL BUSINESS CORPORATIONS. (a) A corporation having a valid election in effect under section 290.9725 shall deduct and withhold a tax as provided in paragraph (b) when it pays or credits amounts to any of its nonresident individual shareholders as dividends or as their share of the corporations' undistributed taxable income for the taxable year.

(b) The amount of tax withheld is determined by multiplying the amount of dividends or undistributed income allocable to Minnesota under section 290.17, paid or credited to a nonresident shareholder during the taxable year by the highest rate used to determine the income tax liability of an individual under section 290.06, subdivision 2c, except that the amount of tax withheld may be determined based on tables provided by the commissioner if the shareholder submits a withholding exemption certificate under subdivision 5.

(c) A corporation required to deduct and withhold tax under this subdivision shall file a return with the commissioner. The tax required to be deducted and withheld during that year must be paid with the return. The return and payment is due on or before the due date specified for filing the corporate income tax return under section 290.42.

(d) A corporation required to withhold and remit tax under this section is liable for payment of the tax to the commissioner, and a person having control of or responsibility for the withholding of the tax or the filing of returns due under this subdivision is personally liable for the tax due.

(e) Notwithstanding paragraph (a), a corporation is not required to deduct and withhold tax for a nonresident shareholder, if:

(1) the shareholder elects to have the tax due paid as part of the corporation's composite return under section 290.39, subdivision 5;

(2) the shareholder has Minnesota assignable federal adjusted gross income from the corporation of less than \$1,000; or

(3) the corporation is liquidated or terminated, the income was generated by a transaction related to the termination or liquidation, and no cash or other property was distributed in the current or prior taxable year.

(f) For purposes of subdivisions 6, paragraph (1)(c), 6a, 7, 11, and 15, a corporation is considered an employer.

Sec. 21. [290.9201] TAX ON NONRESIDENT ENTERTAINERS.

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Subdivision 1. DEFINITIONS. (a) "Entertainer" means an individual who is not a resident of Minnesota or a state with which Minnesota has a reciprocal agreement under section 290.081 who performs acts in Minnesota that amuse, entertain, or inform. For purposes of this section, "entertainer" includes, but is not limited to, a musician, singer, dancer, comedian, thespian, athlete, and public speaker.

(b) Entertainment entity means either: (1) an entertainer who is paid compensation for providing entertainment as an independent contractor, (2) a partnership that is paid compensation for entertainment provided by entertainers who are partners, or (3) a corporation that is paid compensation for entertainment provided by entertainers who are shareholders of the corporation.

Subd. 2. TAX ON ENTERTAINMENT. Entertainment entities are subject to a tax in the amount of two percent of the total compensation received by them during the calendar year for entertainment performed in Minnesota.

Subd. 3. CREDIT AGAINST TAX. Each calendar year an entertainment entity may take a nonrefundable credit of \$100 against the tax imposed by this section.

Subd. 4. FILING DATE OF ANNUAL RETURN. (a) An entertainment entity subject to the tax imposed by this section shall file with the commissioner an annual return for the calendar year on or before April 15 following the close of the calendar year.

(b) The return must be in the form prescribed by the commissioner.

Subd. 5. PAYMENT OF TAX AND LIABILITY. The tax imposed by this section is payable to the commissioner on the filing date and is the joint and several liability of the entertainer and the entertainment entity.

Subd. 6. EXEMPTION FROM INCOME TAX. Compensation subject to the tax imposed under this section is not assignable to Minnesota under section 290.17.

Subd. 7. WITHHOLDING ON COMPENSATION OF ENTERTAINERS. The tax on compensation of an entertainer must be withheld at a rate of two percent of all compensation paid to the entertainment entity by the person or corporation having legal control of the payment of the compensation. The payor is liable to the state for the payment of the tax required to be deducted and withheld, and is not liable to a person for the amount of the payment. The compensation subject to withholding under this section is not subject to the withholding provisions of section 290.92, subdivision 2a, 3, or 28, except the provisions of section 290.92, subdivisions 6a, 7, 14, 15, and 18 shall apply to withholding under this section as if the withholding were upon wages.

Subd. 8. DEPOSIT OF ENTERTAINER WITHHOLDING. (a) The person or corporation having legal control of the payment of compensation taxable under this section shall deposit the earnings tax with the commissioner, and

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shall file an entertainer withholding tax return with the commissioner, within 30 days of each performance.

(b) The withholding tax return must be in the form prescribed by the commissioner.

Subd. 9. REFUNDS. If there is an overpayment of the tax imposed by this section, refund of the overpayment or credit shall be made to the payor under rules prescribed by the commissioner, but only to the extent that the amount of the overpayment was not deducted and withheld under subdivision 7 by the payor. An overpayment that is refunded bears interest at the rate specified in section 270.76, computed from the date of payment until the date the refund is paid to the payor.

Subd. 10. REFUNDS. If the tax withheld at the source under subdivision 7 exceeds by \$1 or more the taxes, penalties, and interest reported in the return of the entertainment entity or imposed by this section, the excess must be refunded to the entertainment entity. If the excess is less than \$1, the commissioner need not refund that amount. If the excess to be refunded exceeds \$10, the amount on the original return bears interest at the rate specified in section 270.76, computed from 90 days after (1) the due date of the return of the employee taxpayer or (2) the date on which the return is filed, whichever is later, to the date the refund is paid to the taxpayer.

Sec. 22. [290.9705] SURETY DEPOSITS REQUIRED FOR CONSTRUCTION CONTRACTS.

Subdivision 1. WITHHOLDING OF PAYMENTS TO OUT-OF-STATE CONTRACTORS. (a) In this section, "person" means a person, corporation, or cooperative, the state of Minnesota and its political subdivisions, and a city, county, and school district in Minnesota.

(b) A person who in the regular course of business is hiring, contracting, or having a contract with a nonresident person or foreign corporation, as defined in Minnesota Statutes 1986, section 290.01, subdivision 5, to perform construction work in Minnesota, shall deduct and withhold eight percent of every payment to the contractor if the contract exceeds or can reasonably be expected to exceed \$100,000.

Subd. 2. REQUIREMENT TO DEPOSIT WITHHOLDINGS WITH COMMISSIONER. A person required to withhold an amount under subdivision 1 shall deposit the amount withheld and file a return prescribed by the commissioner within 30 days of the payment to the contractor. The payor is liable to the state for the amount required to be deducted and is not liable to a person for the amount of the payment.

Subd. 3. WAIVER OF WITHHOLDING. The conditions in subdivisions 1 and 2 may be waived by the commissioner if (1) the contractor gives the commissioner a cash surety or a bond, secured by an insurance company licensed by

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Minnesota, conditioned that the contractor will comply with all applicable provisions of chapters 290 and 297A, or (2) the contractor has done construction work in Minnesota at any time during the three calendar years prior to entering the contract and has fully complied with all the provisions of chapters 290 and 297A for the three prior years.

Subd. 4. DEPOSITS USED AS SURETY FOR COMPLIANCE WITH INCOME AND SALES TAX PROVISIONS. The amounts deposited with the commissioner under subdivisions 2 and 3 are considered a surety to guarantee payment of income, franchise, withholding, and sales and use taxes of the contractor. The commissioner shall retain the money deposited until the commissioner determines the contractor's liability for state income, franchise, sales and use taxes, and taxes withheld under section 290.92. If the deposit exceeds the liability, the commissioner shall refund the difference to the contractor with interest at the rate specified in section 270.76 computed from the dates the amounts were deposited with the commissioner.

Sec. 23. Minnesota Statutes 1988, section 291.005, subdivision 1, is amended to read:

Subdivision 1. Unless the context otherwise clearly requires, the following terms used in this chapter shall have the following meanings:

(1) "Federal gross estate" means the gross estate of a decedent as valued and otherwise determined for federal estate tax purposes by federal taxing authorities pursuant to the provisions of the Internal Revenue Code.

(2) "Minnesota gross estate" means the federal gross estate of a decedent after (a) excluding therefrom any property included therein which has its situs outside Minnesota and (b) including therein any property omitted from the federal gross estate which is includable therein, has its situs in Minnesota, and was not disclosed to federal taxing authorities.

(3) "Personal representative" means the executor, administrator or other person appointed by the court to administer and dispose of the property of the decedent. If there is no executor, administrator or other person appointed, qualified, and acting within this state, then any person in actual or constructive possession of any property having a situs in this state which is included in the federal gross estate of the decedent shall be deemed to be a personal representative to the extent of the property and the Minnesota estate tax due with respect to the property.

(4) "Resident decedent" means an individual whose domicile at the time of death was in Minnesota.

(5) "Nonresident decedent" means an individual whose domicile at the time of death was not in Minnesota.

(6) "Situs of property" means, with respect to real property, the state or

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country in which it is located; with respect to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; and with respect to intangible personal property, the state or country in which the decedent was domiciled at death.

(7) "Commissioner" means the commissioner of revenue or any person to whom the commissioner has delegated functions under this chapter.

(8) "Internal Revenue Code" means the United States Internal Revenue Code of 1954 1986 as amended through December 31, 1984 1988.

Sec. 24. FEDERAL CHANGES.

The changes made by sections 1002, 1004, 1006, 1008, 1009, 1011, 1014, 1018, 3041, 6002, 6026, and 6286 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, which affect the computation of Minnesota gross income as defined in Minnesota Statutes, section 290.01, subdivision 20; lump sum distributions as allowed by Minnesota Statutes, section 290.032; accounting provision applied under Minnesota Statutes, section 290.07; contribution deduction allowed by Minnesota Statutes, sections 290.089 and 290.21; depreciation, amortization, and expensing provisions allowed under Minnesota Statutes, section 290.09; the recognition rules for distributions and reorganization rules provided by Minnesota Statutes, sections 290.13 to 290.139; and the grantor trust and reversionary interest rule exceptions and limitations under Minnesota Statutes, sections 290.23 and 290.25, for years beginning before January 1, 1987, shall be in effect at the same time they become effective for federal income tax purposes.

The additional statute of limitations to file amended returns allowing contributions to institutions of higher education and allowing an election to claim losses on deposits in certain insolvent financial institutions under provisions of sections 6001 and 1009 of the Technical and Miscellaneous Revenue Act of 1988, shall apply to Minnesota for the same period as the federal period applies plus an additional six months.

The waiver of the estimated tax penalties provided by section 1019 of the Technical and Miscellaneous Revenue Act of 1988, shall also apply to Minnesota to the extent the underpayment was created or increased by any provisions of the changes due to applying the federal law changes.

Sec. 25. INSTRUCTION TO REVISOR.

In the next edition of Minnesota Statutes, the revisor of statutes shall substitute the phrase "Internal Revenue Code of 1986, as amended through December 31, 1988" for the words "Internal Revenue Code of 1986, as amended through December 31, 1987" wherever it occurs in chapters 290, except in section 290.01, subdivision 19, and 290A.

Sec. 26. REPEALER.

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Minnesota Statutes 1988, section 290.01, subdivision 6a, is repealed.

Sec. 27. EFFECTIVE DATE.

Section 5 is effective for taxable years beginning after December 31, 1987. Sections 2, 3, 4, and 10 to 18 are effective for taxable years beginning after December 31, 1988. Sections 19 to 21 are effective after December 31, 1989. Section 22 is effective for contracts entered into after December 31, 1989. Section 23 is effective for dates of death after December 31, 1988. Section 1 and sections 6 to 9 are effective for taxable years beginning after December 31, 1986. The part of section 17 pertaining to goodwill and covenants not to compete are only in effect on contracts entered into after the day of final enactment.

Presented to the governor April 7, 1989

Signed by the governor April 7, 1989, 4:55 p.m.

CHAPTER 29—H.F.No. 106

An act relating to game and fish; selection process for wild turkey license holders; proposing coding for new law in Minnesota Statutes, chapter 97B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [97B.723] COMMISSIONER MAY LIMIT NUMBER OF TURKEY HUNTERS.

The commissioner may establish a method, including a drawing, to impartially select persons eligible to take turkeys in an area. Preference must be given to persons that have previously applied in the general selection but have not been selected.

Presented to the governor April 12, 1989

Signed by the governor April 13, 1989, 5:57 p.m.

CHAPTER 30—H.F.No. 508

An act relating to local government; permitting statutory cities to have seven member councils; amending Minnesota Statutes 1988, sections 412.02, subdivision 1, and by adding a subdivision; 412.021, subdivision 2; 412.191, subdivisions 1 and 2; 412.541, subdivision 4; 412.571, subdivisions 1 and 4; 412.581; and 412.631.

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