

CHAPTER 8002
DEPARTMENT OF REVENUE
INCOME AND FRANCHISE TAXES
INDIVIDUAL INCOME DETERMINATION

8002.0200 MINNESOTA GROSS INCOME FOR INDIVIDUALS WHO ARE PART-YEAR RESIDENTS OR NONRESIDENTS OF MINNESOTA (FEDERAL ADJUSTED GROSS INCOME).

8002.0300 SUBTRACTION FOR INTEREST ON UNITED STATES GOVERNMENT OBLIGATIONS.

8002.0100 [Repealed, L 1987 c 268 art 1 s 128]

8002.0200 MINNESOTA GROSS INCOME FOR INDIVIDUALS WHO ARE PART-YEAR RESIDENTS OR NONRESIDENTS OF MINNESOTA (FEDERAL ADJUSTED GROSS INCOME).

Subpart 1. **Gross income.** For computing gross income:

A. An individual who was a part-year resident or a nonresident of Minnesota should use the appropriate federal adjusted gross income that was computed for federal income tax purposes as the beginning point in the determination of Minnesota gross income.

B. Modifications should be made to remove:

(1) income from personal and professional services performed outside of Minnesota;

(2) other income from intangible assets; and

(3) income and losses from tangible property located outside of Minnesota, which income or loss was received or earned while that person was a nonresident of Minnesota.

After removing capital gains and losses not assignable to Minnesota, the taxpayer shall recompute the amount of capital gains that are included in Minnesota gross income. The taxpayer shall also recompute any capital loss limitation and capital loss carryover to remove those amounts that are not assignable to Minnesota.

A modification should also be made to remove the amount of certain qualified pension payments which are received while a nonresident of Minnesota.

A part-year resident would apply these modifications and this subpart to the income and losses received during that part of the year the individual was a nonresident of Minnesota. Income and losses received during that part of the year the individual was a resident of Minnesota would be governed by the rule concerning full-year residents.

C. The following types of income received by a nonresident in Minnesota are to be included in that individual's Minnesota gross income and are assignable to Minnesota:

(1) Wages, salaries, tips, fees, commissions, bonuses, or similar earnings for personal or professional service performed within Minnesota. Two conditions must be met before a taxpayer's income can be deemed personal or professional service income. First, the income producing activity itself must be the rendition of personal or professional services; and, second, the taxpayer must personally render such services; it is not enough to employ others to render them. The following are some examples of taxpayers who may be deriving income or earnings from the performance of personal or professional services: carpenter, plumber, bricklayer, repairworker, barber, beautician, accountant, attorney, doctor, dentist, architect, engineer, or an insurance agent. While the ownership and management of a shopping center or hotel which furnishes business space is business income, it is not a personal service business.

(2) Rents, royalties, and any other income received from land, buildings, machinery, or other tangible property located in Minnesota.

(3) Gains or losses from the sale or other disposition of land, buildings, machinery, or other tangible property located in Minnesota.

(4) Business income or losses.

(a) Income or losses from a business; a farm; that portion of the distributive share of income or losses of a partnership which are attributed to Minnesota; and that portion of the distributed and undistributed net income or loss, which is attributed to Minnesota, of a small business corporation which has elected to be taxed as a partnership for Minnesota purposes, which income or loss is derived from the operation of a business in Minnesota or which is income or loss from tangible property located within Minnesota is assignable to Minnesota.

(b) Business conducted within Minnesota and which has a nexus within Minnesota so that the business is subject to Minnesota income tax would include income or losses from sales whose destination is within Minnesota and a business dealing in personal and professional services where such services were performed in this state. Trade or business income or loss assignable to Minnesota and earned by a nonresident individual as a proprietorship or partnership which was carried on partly within and partly without Minnesota is subject to the three-factor apportionment formula contained in Minnesota Statutes, section 290.19 or apportionment under Minnesota Statutes, section 290.20, except for farm income or income from personal or professional services.

Subp. 2. Definition of federal adjusted gross income. The definition of federal adjusted gross income is the same definition as is used for Minnesota residents and which is determined by the legislature by adopting the reference to the Internal Revenue Code for use in or application to that particular taxable year.

Subp. 3. Distributive shares. Income received by a nonresident, which is the distributive share of partnership income from personal or professional services which are performed in Minnesota, is assignable to Minnesota in the same proportion as the partnership income is assignable to Minnesota even though the nonresident partner performed no personal or professional services in Minnesota during that year.

Subp. 4. Military service. Minnesota gross income for a nonresident of Minnesota does not include income that is received as compensation for military or naval services performed within Minnesota.

Subp. 5. Tax treaties. The United States Government has entered into numerous tax treaties with different nations which provide that when a nonresident alien is employed in the United States the gross income which they earn is not subject to taxation in the United States as long as the nonresident alien is employed only temporarily in the United States. Since that income is not taxable for federal purposes, it would not be taxable for Minnesota purposes. Each tax treaty has somewhat different terms and each case must be examined on its own.

Subp. 6. Reciprocity exclusion. Minnesota gross income does not include personal or professional service income earned in Minnesota by a resident of Wisconsin, North Dakota, or Michigan. A resident of North Dakota or Michigan can use this provision only if the resident customarily returns at least once a month to their residence in that state. Wisconsin, North Dakota, and Michigan are the only three states that have reciprocity exclusion agreements with the state of Minnesota. The income subject to reciprocity exclusion is compensation for the performance of personal or professional services which the taxpayer personally renders. It is not enough to employ others to render these services.

A. The reciprocity exclusion does not apply where the personal or professional service income is earned as part of a business operated by the taxpayer which has employees that do more than incidental duties for the business or where there is the sale or delivery of goods which are more than an incidental part of the business. The reciprocity exclusion does apply to all the personal or professional income earned in the business where the sale of goods and the services of the employees are incidental. Where a partner is a member of a partnership where the selling of goods or the services of employees is more than incidental to the partnership business, reciprocity exclusion would apply only to the partner's salary (personal or professional service income) but not to the distributive shares of the partnership business. Salaries would be subject to a reasonableness test and a provision for salaries must be part of the partnership agreement. If there is no written partnership agreement, or if in the written agreement no salary or salary formula is specifically provided, the payment to the partners is a partnership distribution and is not subject to reciprocity exclusion. Partnership draw does not constitute a salary; it is a convenience to the partners in withdrawing a share of their business equity. If all partners are performing personal services and the sale of goods

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and the services of the employees are incidental, the reciprocity exclusion applies to the partner's salary and to the partner's distributive share. The imputed income of a shareholder of an electing small business corporation (Subchapter S) is not subject to reciprocity exclusion as this income is in the form of a partnership distribution.

B. The word "incidental" means the sale of goods or the services of employees which are only a minor or secondary contribution to the personal service income of the individual or partnership for whom performed. The sale of goods or the services of employees is incidental if for the sale of goods the gross profit (gross receipts less cost of goods sold) or for the services of employees the total compensation paid the employees is less than \$20,000 or ten percent of the gross profit of the business, whichever is greater. The total compensation paid the employees and the gross profit from the sale of goods must be totaled when determining if the goods and employees are incidental.

C. If an individual's total income assignable to Minnesota is subject to reciprocity exclusion, that individual need not file a Minnesota income tax return. However, if that individual has Minnesota income, some of which is subject to reciprocity exclusion and some of which is not subject to reciprocity exclusion and if the income which is not subject to reciprocity exclusion exceeds the filing requirements for filing a Minnesota income tax return, that individual must file a Minnesota income tax return. That individual should use the appropriate federal adjusted gross income for the taxable year. A subtraction would be allowed at a subsequent point on the return to remove income which is subject to reciprocity exclusion.

In order to claim the reciprocity exclusion, individuals should file form M-115, which is an affidavit claim for exemption of compensation received for services performed under the reciprocity exclusion. Although the exact form may change, the following information will be required:

- (1) name, address, and social security number of the individual;
- (2) year for which the affidavit is being submitted;
- (3) amount of income received for services performed in Minnesota subject to reciprocity exclusion;
- (4) a statement whether or not Minnesota income tax was withheld on that income;
- (5) the name and address of the employer;
- (6) type of services performed in Minnesota;
- (7) state in which the individual maintains residence;
- (8) the year in which the individual became a resident of the state;
- (9) a statement disclosing whether or not the individual customarily returns to the individual's residence in the other state at least once a month;
- (10) a statement whether or not the individual filed an income tax return with that state and whether the income subject to reciprocity exclusion was declared on that return; and
- (11) a statement declaring if the individual ever was a resident of Minnesota and, if so, when was the date of last residence.

An individual whose income is subject to reciprocity exclusion may also want to complete a *withholding exemption certificate, form MW-6*.

Subp. 7. Assignable income. The following items of income received by a nonresident are assignable to Minnesota regardless of the time or place received by the taxpayer if the underlying services giving rise to the payment were performed in Minnesota:

- A. a bonus;
- B. commissions; and
- C. vacation pay.

However, certain qualified pension payments are not assignable to Minnesota if they are received by a nonresident, even though the payments are attributable to services previously performed in Minnesota.

Subp. 8. Net operating loss carried back or forward. The amount of a net operating loss that may be carried back or carried forward shall be the same dollar amount allowed in

the determination of federal adjusted gross income. Adjustments must be made in the net operating loss for income and losses which are not assignable to Minnesota and for any changes in the computation of federal adjusted gross income which have not been adopted by the Minnesota Legislature in a law updating the reference to the Internal Revenue Code. A taxpayer may make an adjustment to federal adjusted gross income for the modifications that affect shareholders of a small business corporation which has made an election for federal purposes but not for Minnesota purposes as provided in Minnesota Statutes, section 290.01, subdivision 20c.

The net operating loss carryback or carryover applied as a deduction in the taxable year to which the net operating loss is carried back or carried over shall be equal to the net operating loss carryback or carryover applied in the taxable year in arriving at federal adjusted gross income subject to the following modifications:

A. Increase the amount of carryback or carryover applied in the taxable year by the amount of losses and expenses not assignable to Minnesota incurred in the taxable year.

B. Decrease the amount of carryback or carryover applied in the taxable year by the amount of income not assignable to Minnesota earned in the taxable year and the amount of federal jobs credit or WIN credit earned in the taxable year.

C. A taxpayer who is not a resident of Minnesota during any part of the taxable year and who has no income assignable to Minnesota during the taxable year shall apply no net operating loss carryback or carryover in the taxable year.

The net operating loss carryback or carryover to the next consecutive taxable year shall be the net operating loss carryback or carryover as calculated in this subpart less the amount applied in the taxable year(s) as above. No additional net operating loss carryback or carryover shall be allowed if the entire amount has been used to offset Minnesota income in a year earlier than was possible on the federal return. A net operating loss carryback or carryover that was allowed to offset federal income in a year earlier than was possible on the Minnesota return shall still be allowed to offset Minnesota income.

Statutory Authority: *MS s 290.081 para (c); 290.52*

History: 8 SR 2412; 17 SR 1279

8002.0300 SUBTRACTION FOR INTEREST ON UNITED STATES GOVERNMENT OBLIGATIONS.

Subpart 1. **Conditions for qualification.** Minnesota Statutes, section 290.01, subdivision 19b, clause (1), allows an individual taxpayer, an estate, or a trust to subtract the amount of interest earned on certain obligations of the United States government from federal taxable income. To qualify for this subtraction, the obligation must meet the following conditions:

A. For the purposes of these conditions, "interest" includes:

(1) income reported federally as ordinary income pursuant to sections 454 and 1271 through 1286 of the Internal Revenue Code of 1986, as amended through December 31, 1992; and

(2) dividends from regulated investment companies as defined by section 851(a) or (h) of the Internal Revenue Code of 1986, as amended through December 31, 1992, to the extent that the income of the regulated investment company is derived from interest on federal obligations and is reported federally as dividend income by shareholders.

B. The obligation must be an obligation of the United States of America, whether through an agency, authority, commission, or instrumentality of the United States, and must be exempt from state taxation under federal law.

C. The obligation must be in writing, bear interest, contain a binding promise by the United States to pay specified sums on specified dates, and be specifically authorized by Congress. Open accounts and other unsettled claims or demands are not obligations of the United States for the purposes of this part.

D. The obligation must be a direct and primary obligation of the United States. If the primary obligor is not the United States and the United States is merely an insurer or guarantor and has only a secondary or contingent liability, the interest income is not exempt. If the primary obligor is not the United States but the United States pays all or part of the interest on

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the obligation, the interest income is not exempt. If the obligation was originally a private obligation and if the obligee later gives up all rights against the original obligor as part of an insurance endorsement or otherwise, and agrees to look only to the United States for payment of both principal and interest, then the obligation has become a primary obligation of the United States and the interest income from it is exempt from state taxation.

E. The interest income on the obligation must have been included in federal taxable income for the taxable year that subtraction is claimed. If only a portion of the interest income on an obligation has been included in federal taxable income, only the included portion may be subtracted. Where the interest is in the form of dividends from a regulated investment company and all of the regulated investment company's interest is derived from interest on obligations that are exempt from state taxation by federal law, the full amount of the dividends received by shareholders may be subtracted. Where less than the full amount is derived from interest on exempt obligations, the amount to be subtracted is determined as follows:

Regulated investment company's interest income on federal obligations less expenses attributable to such income	+	Regulated investment company's taxable income as defined by section 852(b)(2) of the Internal Revenue Code of 1986, as amended through December 31, 1992, before deduction for dividends paid	=	Percent of federally taxable ordinary income dividends received by shareholders that qualify as exempt
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In the case of a series fund, as defined by the Internal Revenue Code, section 851(h), the portion of the dividends paid that is exempt from Minnesota income tax must be determined on a fund-by-fund basis.

Subp. 2. **Exhibits.** Subpart 3 contains a list of securities that are exempt from Minnesota income tax and for which a subtraction is allowed. Subpart 4 contains a list of securities that are subject to Minnesota income tax and for which no subtraction is allowed. Subparts 5 and 6 contain lists of various federal agencies or related organizations that either generally issue exempt obligations or generally issue taxable obligations. These lists are not intended to be conclusive on the taxable status of any particular obligation issued by or in conjunction with a listed agency or organization. Even though a listed agency generally only issues either exempt obligations or taxable obligations, it does not follow that each and every obligation carrying the name of that particular agency is either exempt or taxable. An agency may issue its own obligations that are exempt and also may handle private obligations that are not exempt. For example, the agency may administer, purchase and sell, insure, or guarantee an otherwise private obligation. Such action by the agency does not convert a private obligation into a direct and primary obligation of the United States of America and, therefore, does not make the private obligation tax exempt. The taxable status of each obligation must be determined separately in accordance with subpart 1, items A to E.

Subp. 3. Exempt obligations listed by name of security.

Name of Security	Agency	Authority as amended through 6-15-92
A. Banks for Cooperatives bonds	Banks for Cooperatives	12 USC S 2134
B. Consolidated collateral trust debentures	Federal Intermediate Credit Banks	12 USC S 2077
C. Consolidated discount notes	Federal Home Loan Banks	12 USC S 1433

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D.	Consolidated Federal Farm Loan bond	Federal Land Banks	12 USC S 2023
E.	Consolidated Federal Home Loan Bank notes	Federal Home Loan Banks	12 USC S 1433
F.	Farmers Home Administration notes, as defined in Tobak v. Commissioner	Farmers Home Administration	31 USC S 3124, Tobak v. Commissioner, docket number 2244 Minn. tax court (March 10, 1977)
G.	Federal Farm Credit Banks consolidated systemwide bonds and notes	Federal Land Banks, Federal Intermediate Credit Banks	12 USC SS 2023, 2077, and 2134
H.	Industrial Development Bonds of East Samoa	American Samoa	48 USC S 1670
I.	Proprietary zero-coupon certificates	U.S. Treasury Department	31 USC S 3124
J.	Puerto Rico bonds	Puerto Rico	48 USC S 745
K.	U.S. freedom shares	U.S. Treasury Department	31 USC S 3124
L.	U.S. savings bonds	U.S. Treasury Department	31 USC SS 3105 and 3124
M.	U.S. Treasury bills	U.S. Treasury Department	31 USC SS 3104 and 3124
N.	U.S. Treasury bonds	U.S. Treasury Department	31 USC SS 3102 and 3124
O.	U.S. Treasury certificates of indebtedness	U.S. Treasury Department	31 USC SS 3104 and 3124
P.	United States notes	U.S. Treasury Department	31 USC SS 3103 and 3124
Q.	United States Postal Service bonds	U.S. Postal service	39 USC S 2005
R.	Virgin Islands general obligation bonds	Virgin Islands	48 USC S 1574(b)(ii)(A)
S.	Virgin Islands Public Improvement bond	Virgin Islands	48 USC S 1574(b)(i)

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Subp. 4. Taxable obligations listed by name of security.

Name of Security	Agency	Authority as amended through 6-15-92
A. Certificate of beneficial interest (CBI's)	Export-Import Bank of the U.S. (Eximbank)	12 USC SS 635 and 635d
B. Certificate of beneficial ownership (CBO's)	Farmers Home Administration	7 USC SS 1922-1928
C. Eximbank debentures	Export-Import Bank of the U.S. (Eximbank)	12 USC S 635
D. Federal Assets Financing Trust participation certificates	Government National Mortgage Association (GNMA)	12 USC SS 1717(c) and 1721
E. Federal Assets Liquidation Trust participation certificates	Government National Mortgage Association (GNMA)	12 USC SS 1717(c), 1721, and 1723 c
F. Government Mortgage Liquidation Trust Participation certificates	Government National Mortgage Association (GNMA)	12 USC SS 1717(c) and 1721
G. GNMA mortgage-backed bonds	Government National Mortgage Association (GNMA)	12 USC SS 1717(c) and 1721
H. GNMA pass-through Securities	Government National Mortgage Association (GNMA)	12 USC SS 1717(c) and 1721
I. Guaranteed mortgage certificates (GMC's)	Federal Home Loan Mortgage Corporation	12 USC SS 1452(d) and 1455
J. Mortgage participation certificates (PC's)	Federal Home Loan Mortgage Corporation	12 USC SS 1452(d) and 1455
K. National Government Securities Trust	Government National Mortgage Association (GNMA)	12 USC SS 1717(c) and 1721
L. New communities debentures	Privately issued under HUD program	42 USC SS 3902 and 4514

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M.	Participation certificates (PC's)	Export-Import Bank of the U.S. (Eximbank)	12 USC S 635
N.	Rural Telephone debentures	Rural Electrification Administration	7 USC S 947(a)
O.	SBIC debentures	Small Business Investment Companies	15 USC S 687(e)
P.	Small Business Administration notes	Small Business Administration	15 USC S 633

Subp. 5. Agencies which generally issue exempt obligations.

Notice: This listing is only a guide and is not conclusive on the issue of the taxable status of an obligation. Each obligation issued by a listed agency must be separately analyzed according to subpart 1, items A to E.

Name of Agency	Types of Securities	Authority as amended through 6-15-92
A. Bank for Cooperatives	Notes, debentures, and other obligations	12 USC S 2134
B. Commodity Credit Corporation	Bonds, notes, debentures, and other similar obligations	15 USC S 713a-5
C. Farm Credit System Financial Assistance Corporation	Notes, bonds, debentures, and other obligations	12 USC S 2278b-10
D. Federal Deposit Insurance Corporation	All notes, debentures, bonds, or other obligations	12 USC S 1825
E. Federal Farm Credit Administration	Obligations	12 USC SS 2023, 2027, 2098, 2134, and 2278(b)-10
F. Federal Home Loan Banks	Notes, debentures, bonds, and other obligations	12 USC S 1433
G. Federal Intermediate Credit Banks	Notes, bonds, and debentures	12 USC S 2079
H. Federal Land Bank Associations	Notes, bonds, debentures, and other obligations	12 USC S 2098

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I.	Federal Land Banks	(a) Mortgages held by the instrumentality (b) Notes, bonds, debentures, and other obligations	12 USC S 2023 12 USC S 2023
J.	Federal Savings & Loan Insurance Corporation	All notes, debentures, bonds, or other obligations	12 USC S 1725(e)
K.	Financing Corporation	Notes, debentures, and other obligations	12 USC S 1441
L.	General Insurance Fund of the Department of Housing and Urban Development, including	Debentures	
	(1) Rental Housing Insurance	i.	12 USC S 1713(i)
	(2) Rental Housing Project	ii.	12 USC S 1747g(g)
	(3) War Housing Insurance	iii.	12 USC S 1739(d)
	(4) Armed Services Housing	iv.	12 USC S 1748b(f)
	(5) National Defense Housing Insurance	v.	12 USC S 1750c(d)
	(6) Neighborhood Conservation Housing Insurance	vi.	12 USC S 1715k (h)(7)
M.	Guam	Bonds	48 USC S 1423a
N.	Production Credit Associations	Notes, debentures, and other obligations	12 USC S 2077
O.	Puerto Rico	Obligations	48 USC S 745
P.	Resolution Funding Corporations	All notes, debentures, bonds, and other obligations	12 USC S 1441a
Q.	Student Loan Marketing Association	Bonds and notes	20 USC S 1087-2
R.	Tennessee Valley Authority	Bonds	16 USC S 831n-4(d)

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S. U.S. Postal Service	Obligations	39 USC S 2005(d)(4)
T. Virgin Islands	Bonds	48 USC S 1574

Subp. 6. Agencies or organizations which generally issue taxable obligations.

Notice: This listing is only a guide and is not conclusive on the issue of the taxable status of an obligation. Each obligation issued by a listed agency must be separately analyzed according to subpart 1, items A to E.

Name of Agency or Organization	Types of Securities	Authority as amended through 6-15-92
A. Asian Development Bank	Obligations	22 USC SS 285-285t
B. College Construction Loan Insurance Association	Obligations	20 USC S 1132
C. District of Columbia Armory Board	Obligations	31 USC S 3124(a)
D. Environmental Financing Authority	Obligations	33 USC S 1281 note, P.L. 92-500 S 12(j)
E. Export-Import Bank	Notes, debentures, bonds, or other obligations	12 USC SS 635-635n
F. Farmers Home Administration	Obligations	7 USC SS 1922-1928
G. Federal Financing Bank	Obligations	12 USC S 2288
H. Federal Home Loan Mortgage Corporation	Obligations	12 USC S 1455
I. Federal National Mortgage Association (FNMA)	Obligations, mortgage-backed securities, subordinated obligations, participation certificates (PC's)	12 USC S 1719(e)
J. Federal Reserve banks	Obligations	12 USC S 548
K. Government National Mortgage Association (GNMA)	Obligations, mortgage-backed securities, participation certificates (PC's)	12 USC SS 1717(c), 1721, and 1723c

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L.	Inter-American Development Bank	Obligations	22 USC SS 283-283z
M.	International Bank for Reconstruction and Development (World Banks)	Obligations	22 USC SS 286-286r
N.	International Monetary Fund	Obligations	22 USC SS 286-286r
O.	Maritime Administration Merchant Marine	Private obligations guaranteed by agency	46 USC S 1273
P.	National Consumer Cooperative Bank	Obligations	12 USC S 3017(c)
Q.	New community development corporations	Bonds, debentures, notes, and other obligations issued on behalf of private new community developers and state land development agencies which are guaranteed by HUD	42 USC SS 3902 and 4514
R.	Small Business Administration	Notes	15 USC S 633
S.	Small Business Investment Companies	Debenture bonds, promissory notes, and other obligations	15 USC S 687(e)

Statutory Authority: *MS.s 270.06; 290.52*

History: *17 SR 1670*