

CHAPTER 8010
DEPARTMENT OF REVENUE
INCOME TAX DIVISION
NONDEDUCTIBLE ITEMS

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8010.0100 PERSONAL AND FAMILY EXPENSES.

As a general rule, personal, living, or family expenses do not constitute a proper deduction from gross income. This rule is modified by the provisions of Minnesota Statutes, section 290.09 which specifically permits the deduction of certain personal expenses such as interest, taxes, losses, bad debts, contributions, and sickness and personal injury expenses. Reference should be made to that section for the determination of the deductibility of any particular item. The following are classified as nondeductible items under Minnesota Statutes, section 290.10:

- A. Premiums paid on any life insurance policy covering the life of the taxpayer or any other person.
- B. Insurance paid on a dwelling owned and occupied by the taxpayer.
- C. Payment for funeral expenses.
- D. Expenses of education, except as provided in part 8009.0600
- E. Allowances given to minor children by their parents in consideration of services if the parents were entitled to such services.
- F. An amount allowed a wife by a husband as compensation for acting as housewife.
- G. Sums paid to a wife under terms of a marriage agreement.
- H. Payments as damages for breach of promise to marry.
- I. Payments for alienation of affections.
- J. Alimony, separate maintenance, and support payments except as provided in Minnesota Statutes, section 290.072.
- K. The cost of board and wages of a housekeeper.
- L. Taxes if paid by a person other than the person upon whom the tax was imposed. Penalties paid with respect to state or federal income taxes. (For other nondeductible taxes, see Minnesota Statutes, section 290.09, subdivision 4 and part 8009.1700.)
- M. Expenses in going to and from one's place of employment or expenses to seek employment. However, fees paid to an employment agency are deductible.
- N. The nonbusiness portion of the upkeep and operating expense of an automobile.
- O. Loss on the sale of pleasure automobiles.
- P. Loss on sale of social club memberships.
- Q. Fees paid by an individual for general personal legal services.
- R. Attorney's fees in connection with foreclosure proceedings.
- S. Commissions paid on mortgage renewals.
- T. The cost of preparing an abstract in case of a sale of capital assets.
- U. Expenses paid for a legatee to sustain or attack the validity of a will.

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V. The cost of hunting, fishing, and dog licenses.

W. The value of house rent of a home occupied by the taxpayer, or the amount paid for the rent of a home.

X. In the case of a professional man who rents a property for residential purposes but incidentally receives clients, patients, or callers there, in connection with his professional work (his place of business being elsewhere) no part of the rent is deductible as a business expense. If, however, he uses part of the house for an office such portion of the rent as is properly attributable to such office is deductible.

For treatment of amounts paid into pension or retirement funds, see 2010 (8).

Statutory Authority: *MS s 290.52*

Note: Reg. 2010 (8) has been repealed

8010.0200 NONDEDUCTIBLE ITEMS, CAPITAL EXPENDITURES.

Certain expenses are treated as follows:

A. Amounts paid for increasing the capital value or for making good the depreciation (for which a deduction had been made) of property are not deductible from gross income.

B. Amounts expended for securing a copyright and plates which remain the property of the person making the payments are investments of capital.

C. The cost of defending or perfecting title to property constitutes a part of the cost of the property and is not a deductible expense.

D. Legal expenses incurred in foreclosing a mortgage are not deductible; they should be added to the cost of the investment.

E. Commissions and legal fees paid by a lessor to secure a long-term lease are capital expenditures to be spread ratably over the term of the lease.

F. Amounts paid for buildings or permanent improvements which increase the value of any property or estate are capital expenditures. (But see Minnesota statutes, section 290.09, subdivision 21 for treatment of soil or water conservation expenditures.)

G. The excess cost of remodeling a building over the actual value of improvements when completed is a capital expenditure.

H. The cost of extensive alterations to buildings representing unusual and extraordinary expense is not deductible in any single year but should be added to the purchase price of the property and subjected to depreciation deductions.

I. The amounts expended for replacements or renewals of a permanent nature should be charged directly to the property account or to the depreciation reserve account depending upon the method of treating depreciation charges in the books of accounts.

J. Expenditures for the services of an architect are part of the cost of the building.

K. Insurance premiums and other expenses paid during building operations are capital expenditures.

L. Delinquent taxes, insurance, and other expenses paid by a mortgagee prior to foreclosure represent an additional loan on the property.

M. Delinquent taxes, insurance, and other expenses paid by a mortgagee after foreclosure represent an additional investment in the property.

N. Development expenses incurred in connection with developing mineral deposits are treated as capital expenditures and they should be added to the cost of the property and made subject to depreciation.

O. For treatment of expenditures for research and experimentation, see Minnesota Statutes, section 290.09, subdivision 18.

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P. The amount expended in prosecuting litigation in connection with patent infringements after the patent has been issued is deductible as an expense in the year paid or accrued.

Q. For treatment of expenses of organizing a corporation, see Minnesota Statutes, section 290.09, subdivision 19.

R. Other than as specified in preceding rules, there will not be allowed as deductions from gross income any amounts added to a reserve account by whatever nature they are called.

S. Amounts to be assessed and paid under an agreement by the bondholder or shareholder of a corporation to be used in reorganization of the corporation are investments of capital and not deductible for any purpose in returns of income.

T. Assessments on bank stock paid by the stockholders are not deductible until the stock is disposed of or becomes worthless.

U. Commissions paid in selling securities, when such commissions are not an ordinary and necessary business expense, reduce the selling price.

V. Commissions paid in purchasing securities are part of the cost price of such securities.

W. A holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and to increase the value of its stockholdings in the subsidiary may not deduct amounts paid in carrying out this guarantee in computing its net income, but such payments may be added to the cost of its stock in the subsidiary.

Statutory Authority: *MS s 290.52*

8010.0300 NONDEDUCTIBLE EXPENSES, INTEREST, AND TAXES.

No deduction from gross income shall be allowed for expenses, interest, and taxes connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this act. The phrase, "income ... included in the measure of the tax," as used in Minnesota Statutes, section 290.10, clause (9) does not refer to the net or dollar volume income actually taxed by the state but to the class or classes of income subject to taxation. For example, no deduction is permitted for expenses paid or incurred in the production or collection of interest income if such interest income is of a type which is excluded from gross income under Minnesota Statutes, section 290.08. If an item of expense, interest, or taxes is attributable partly to a class of income which is taxable under this act and partly to a class of income which is not taxable under this act, a deduction is permitted only for the portion of such expense, interest, or tax which is reasonably apportionable, in the light of all the facts and circumstances, to the class of income which is taxable under this act. See also Minnesota Statutes, section 290.17 (allocation of gross income to state), and Minnesota Statutes, section 290.18 (computation of taxable net income and adjusted gross income) and the rules thereunder.

The total amount of federal income taxes paid is not deductible if (1) a class of income included in the federal return is not included in the measure of the tax under this act (see preceding paragraph), (2) all or a portion of the income included in the federal return is not assignable to this state (see Minnesota Statutes, section 290.18 and the rules thereunder).

If the husband and wife file a joint federal return and separate Minnesota returns, a deduction for federal income taxes paid is allowed provided (1) the spouse claiming the deduction paid the tax during the year for which the deduction is claimed, and (2) such spouse was liable for the tax.

In cases where federal income taxes are paid out of joint bank accounts or joint funds, the tax shall be considered as having been paid by either spouse. Amounts withheld for payment of federal income taxes shall be considered

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payments made by the spouse from whom the amount was withheld.

Statutory Authority: *MS s 290.52*

8010.0400 TAXES AND CARRYING CHARGES CHARGEABLE TO CAPITAL ACCOUNT AND TREATED AS CAPITAL ITEMS.

Subpart 1. **In general.** In accordance with Minnesota Statutes, section 290.10, clause (10), items enumerated in subpart 2, item A may be capitalized at the election of the taxpayer. Thus, taxes and carrying charges with respect to property of the type described in this part are chargeable to capital account at the election of the taxpayer, notwithstanding that they are otherwise expressly deductible under provisions of Minnesota Statutes, chapter 290. No deduction is allowable for any items so treated.

Subp. 2. **Taxes and carrying charges.** The taxpayer may elect, as provided in subpart 3, to treat the items enumerated in this part which are otherwise expressly deductible under the provisions of Minnesota Statutes, chapter 290 as chargeable to capital account either as a component of original cost or other basis, for the purposes of Minnesota Statutes, sections 290.14 and 290.15. The items thus chargeable to capital account are:

A. In the case of unimproved and unproductive real property, annual taxes, interest on a mortgage, and other carrying charges.

B. In the case of real property, whether improved or unimproved and whether productive or unproductive:

(1) interest on a loan (but not theoretical interest of a taxpayer using his own funds);

(2) taxes of the owner of such real property measured by compensation paid to his employees;

(3) taxes of such owner imposed on the purchase of materials, or on the storage, use, or other consumption of materials; and

(4) other necessary expenditures, paid or incurred for the development of the real property or for the construction of an improvement or additional improvement to such real property, up to the time the development or construction work has been completed. The development or construction work with respect to which such items are incurred may relate to unimproved and unproductive real estate whether the construction work will make the property productive of income subject to tax (as in the case of a factory) or not (as in the case of a personal residence), or may relate to property already improved or productive (as in the case of a plant addition or improvement, such as the construction of another floor on a factory or the installation of insulation therein);

C. In the case of personal property:

(1) taxes of an employer measured by compensation for services rendered in transporting machinery or other fixed assets to the plant or installing them therein;

(2) interest on a loan to purchase such property or to pay for transporting or installing the same; and

(3) taxes of the owner thereof imposed on the purchase of such property or on the storage, use, or other consumption of such property, paid or incurred up to the date of installation or the date when such property is first put into use by the taxpayer, whichever date is later.

D. Any other taxes and carrying charges with respect to property, otherwise deductible, which in the opinion of the commissioner are, under sound accounting principles, chargeable to capital account.

The sole effect of Minnesota Statutes, section 290.10, clause (10) is to permit the items enumerated in this part to be chargeable to capital account notwithstanding that such items are otherwise expressly deductible under the

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provisions of Minnesota Statutes, chapter 290. An item not otherwise deductible may not be capitalized under Minnesota Statutes, section 290.10, clause (10).

On the absence of a provision in this part for treating a given item as a capital item, this part has no effect on the treatment otherwise accorded such item. Thus, items which are otherwise deductible are deductible notwithstanding the provisions of this part, and items which are otherwise treated as capital items are to be so treated. Similarly, an item not otherwise deductible is not made deductible by this part. Nor is the absence of a provision in this part for treating a given item as a capital item to be construed as withdrawing or modifying the right now given to the taxpayer under any other provisions of Minnesota Statutes, chapter 290, or of the rules thereunder, to elect to capitalize or to deduct a given item.

Subp. 3. Election to charge taxes and carrying charges to capital account. If for any taxable year there are two or more items of the type described in subpart 2, which relates to the same project to which the election is applicable, the taxpayer may elect to capitalize any one or more of such items even though he does not elect to capitalize the remaining items or to capitalize items of the same type relating to other projects. However, if expenditures for several items of the same type are incurred with respect to a single project, the election to capitalize must, if exercised, be exercised as to all items of that type. For purposes of this part, a "project" means, in the case of items described in subpart 2, item A, a particular development of or construction of an improvement to real property, and in the case of items described in subpart 2, item C, the transportation and installation of machinery or other fixed assets.

An election with respect to an item described in:

A. subpart 2, item A is effective only for the year for which it is made;

B. subpart 2, item B is effective until the development or construction work described has been completed;

C. subpart 2, item C is effective until the later of either the date of installation of the property described, or the date when such property is first put into use by the taxpayer; and

D. subpart 2, item D is effective as determined by the commissioner.

Thus, an item chargeable to capital account under this part must continue to be capitalized for the entire period described in the paragraph applicable to such election although such period may consist of more than one taxable year.

If the taxpayer elects to capitalize an item or items under this part, such election shall be exercised by filing with the original return for the year for which the election is made a statement indicating the item or items (whether with respect to the same project or to different projects) which the taxpayer elects to treat as chargeable to capital account. Elections filed for taxable years beginning after December 31, 1960, and prior to January 1, 1965, shall be filed not later than July 15, 1966.

Statutory Authority: *MS s 290.52*