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CHAPTER 8017

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ASSIGNMENT AND APPORTIONMENT OF INCOME

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8017.0100 ASSIGNMENT OF INCOME TO MINNESOTA; INCOME FROM PROPERTY.

Subpart 1. Income from tangible property. Income and gains received from tangible property not employed in the business of the recipient shall be assigned to this state if such property has a situs within it.

Income and gains received from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom shall be assigned to this state if such property has a situs within it.

The term "tangible property" means corporeal property, either real or personal. Income from property may be derived through its sale, rental, or operation.

Real estate and tangible personal property have a situs in the state in which they are located. Income derived from the sale or use of such property follows its situs, regardless of the residence of the recipient. For instance, rent, less related expenses, received from tangible property situated in Minnesota, is assignable to this state regardless of the domicile of the recipient.

No gain or loss from tangible property, not employed in a business, having a situs without Minnesota is assignable to this state. For instance, income derived from the operation of a gold mine located without Minnesota is not assignable to this state, nor is any loss therefrom deductible. This general rule applies in every case where the interest of the taxpayer is of a tangible nature.

The income from the operation of a farm is assigned to this state if the farm is located in this state and to other states if the farm is not located in this state. The operation of a farm includes the sale of products produced on the farm. The purchase of livestock for feeding purposes and subsequent resale is a part of the farming operations and the income is assignable to the state in which the farm is located. The income from the operation of a farm is assigned to the state in which the farm is located regardless of where the products produced on the farm are sold. The income which a nonresident receives from a farm located in this state is assignable to this state.

The income realized from the purchase and sale of farm products not raised on the vendor's farm is not income realized from the operation of a farm and is assigned to the state in which the sale is made.

The income from real estate or tangible personal property used in a trade or business where such trade or business does not consist principally of the holding of such property and the collection of the income and gains therefrom shall be apportioned according to the provisions of Minnesota Statutes, section 290.19.

Subp. 2. Income from intangible property. The methods for assignment of

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income or gains from intangible personal property differ from those used for the assignment of income from tangible property. The income from intangible personal property ordinarily follows the domicile of the recipient except where such property is employed in the business of the taxpayer and such business does not consist principally of the holding of such property and the collection of the income and gains therefrom. In cases where stocks, bonds, or other intangible property constitute the stock in trade, the income from trading in such intangible property is assignable to the state in which such business is conducted. (For definitions of "domicile" see Minnesota Statutes, section 290.01, subdivision 7 and part 8001.0300.)

Income or gains from intangible personal property not employed in the business of a corporation taxpayer taxable under the provisions of this act shall be assigned to this state if the corporation has its legal domicile in this state or its commercial domicile in this state.

Income or gains from intangible personal property held in trust shall be assigned to this state, if the recipient of such income is domiciled within this state and if such income or gains would be taxable to such recipient under Minnesota Statutes, section 290.22; or if the grantor of such trust is domiciled within this state and such income or gains would be taxable to such grantor under Minnesota Statutes, section 290.28.

Intangible personal property includes stocks, bonds, mortgages, notes, accounts receivable, patents, copyrights, etc., and usually has no fixed situs separate from the domicile of the owner. However, intangible personal property employed in a business may, through integration, acquire a situs other than at the domicile of the owner.

Profits or losses on casual stock exchange transactions constitute taxable income or deductible loss to a person domiciled in Minnesota, regardless of where such transactions take place.

Income from royalties from patents should be distinguished from royalties from real estate or intangible personal property which follow the situs of the property.

While profit from the sale of real estate follows the situs of the property, the income from a contract for deed follows the domicile of the recipient. Interest received or gain realized by a person domiciled in Minnesota, on a mortgage secured by Wisconsin real estate is assignable to this state.

The income from intangible personal property used in a trade or business where such trade or business does not consist principally of the holding of such property and the collection of the income and gains therefrom shall be apportioned according to the provisions of Minnesota Statutes, section 290.19.

Dividends received by a taxpayer domiciled in Minnesota from shares of stock in a corporation, wherever located, are assignable to this state.

Statutory Authority: *MS s 290.52*

NOTE: Minnesota Statutes, section 290.28, was repealed by Laws of Minnesota 1981, chapter 178, section 119.

8017.2000 DEDUCTIONS ALLOWABLE IN COMPUTING TAXABLE NET INCOME.

Subpart 1. In general. In computing taxable net income (except insofar as Minnesota Statutes, section 290.19 is applicable) the extent to which deductions permitted by Minnesota Statutes, section 290.09 will be allowed shall be determined as provided in subparts 2 to 6.

Subp. 2. Business expenses. If the deductions permitted by Minnesota Statutes, section 290.09 are connected with and allocable against the production or receipt of gross income assignable to this state, they are allowable in their entirety.

Minnesota Statutes, section 290.09 permits some deductions which are not

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connected with and allocable against the production or receipt of gross income assignable to Minnesota. If such deductions are connected with and allocable against the production or receipt of gross income assignable to some other state or country, they do not constitute an allowable deduction. The use of the term "connected with and allocable against" in the preceding sentence pertaining to other states or countries, is construed in a broad sense. For instance, if a Minnesota taxpayer owns real estate in another state, which at any given time is wholly unproductive of gross income, the absence of such gross income would not operate to classify the expenses of that property during its unproductive period as deductions not connected with the production of gross income assignable to other states. The fact that the gross income from such property (even though at present it offers no potentiality of gross income) would be assignable to some other state, if and when earned, is sufficient to render the expenses connected with such property totally assignable without Minnesota at any time.

Subp. 3. Nonbusiness expenses. There are some deductions ordinarily allowable under the provision of Minnesota Statutes, section 290.09 which are not connected with and allocable against the production or receipt of gross income. Examples of such deductions are sickness and personal injury expenses, nonbusiness interest, nonbusiness losses, and nonbusiness bad debts. Such nonbusiness deductions are allowable to the extent of the ratio which the taxpayer's gross income from sources within this state bears to his gross income from all sources. For example, a taxpayer having a total gross income of \$10,000, \$5,000 of which was assignable without Minnesota as business income earned in other states, would be allowed to claim as a deduction one-half of his nonbusiness deductions in the computation of his taxable net income assignable to this state. There is one exception to this rule, however, and that is in the case of taxes of the kind deductible under Minnesota Statutes, section 290.09, subdivision 4. Such taxes are deductible in their entirety if paid to the state of Minnesota or any of its subdivisions authorized to impose such taxes.

Subp. 4. Gross income defined. The term "gross income," as used in Minnesota Statutes, section 290.18, is construed to mean:

A. in the case of a business involving the sale of personal property, the gross profit; and

B. in all other cases, the gross earnings or receipts.

Subp. 5. Federal income and excess profits taxes. Federal income and excess profits taxes are deductible only in the year in which paid or withheld, and for the purpose of allocating such taxes to this state the following items shall apply:

A. When the entire net income of a taxpayer, of the year for which the federal income and excess profits taxes were assessed, arises from a trade or business carried on partly within and partly without this state, such taxes shall be allowed as a deduction from gross income, of the year in which such taxes are paid, in computing net income subject to apportionment.

B. If, in the year for which the federal income and excess profits taxes were assessed, a taxpayer has net income from a trade or business carried on partly within and partly without this state and, in addition, has nonapportionable income assignable to Minnesota or nonapportionable income not assignable to Minnesota, or both, such taxes connected with and allocable against the production or receipt of nonapportionable income assignable to Minnesota shall be deductible and such taxes connected with and allocable against the production or receipt of nonapportionable income not assignable to this state shall not be deductible. Federal income and excess profits taxes connected with and allocable against the production or receipt of apportionable income of the year for which such taxes were assessed, allowable as a deduction, shall be determined in accordance with the provisions of item A.

For the purpose of computing the portion of federal income and excess

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profits taxes connected with and allocable against the production or receipt of nonapportionable income, the basis shall be the ratio of such nonapportionable income to income from all sources of the year for which such taxes were assessed, unless a specified ratio of federal tax applied to part or all of such nonapportionable income in which case such rate shall be used.

C. Federal income and excess profits taxes connected with and allocable against the production or receipt of income which is exempt or excluded from taxation under Minnesota Statutes, section 290.05 or 290.08 shall not be allowed as a deduction. This computation shall be based upon the ratio of such exempt or excluded income to total income from all sources of the year for which such taxes were assessed.

D. In cases where net income is permitted to be allocated to Minnesota on the basis of separate accounting, federal income and excess profits taxes to be allowed as a deduction shall be determined by the ratio which such net income assigned to Minnesota bears to the total income from all sources of the year for which such taxes were assessed.

In any case when it appears that the foregoing formula does not fairly and properly allocate federal income and excess profits taxes paid, the commissioner may permit or require the use of other methods.

Subp. 6. **Application of Minnesota Statutes, section 290.18, subdivision 1, clause (2).** The provisions of Minnesota Statutes, section 290.18, subdivision 1, clause (2) apply to both resident and nonresident taxpayers. Taxpayers claiming deductions under this provision must furnish the commissioner with sufficient information to enable him to determine the validity and correctness of such deductions.

Statutory Authority: *MS s 290.52*

8017.3000 APPORTIONMENT OF NET INCOME OF BUSINESS CONDUCTED PARTLY WITHIN MINNESOTA.

Subpart 1. **Applicability of Minnesota Statutes, section 290.19.** The formulas prescribed by the provisions of Minnesota Statutes, section 290.19 shall be applied to the apportionable net income of a trade or business where the business carried on within this state is a part of a unitary business carried on both within and without this state.

Subp. 2. **Apportionment of net income under Minnesota Statutes, section 290.19, subdivision 1, clause (1).** If the business consists of the manufacture of personal property and sale of said property within and without Minnesota the formula shall be as follows:

A. Under Minnesota Statutes, section 290.19, subdivision 1, clause (1)(a), (b), (c).

$$\frac{\text{Minn. sales}}{\text{Total Sales}} + \frac{\text{Minn. payroll}}{\text{Total payroll}} + \frac{\text{Minn. Tangible Property}}{\text{Total Tangible Property}} \div 3 = \% \text{ to Minn.}$$

Using hypothetical percentages we secure a percent to Minnesota thus:

	Within Minn.	Without Minn.	Total Percent
Sales	40%	60%	100%
Payroll	50%	50%	100%
Tangible Property	70%	30%	100%
Divide by Three	3/160%		
Percent to Minnesota	53-1/3%		

B. Under Minnesota Statutes, section 290.19, subdivision 1, clause (1)(d). The following alternative formula is employed if a lesser percentage to Minnesota results by its use:

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$$\begin{array}{rcccl}
 \text{Minn. Sales} & & \text{Minn. Payroll} & & \text{Minn. Tangible Property} \\
 70\% \text{ of } \frac{\quad}{\text{Total Sales}} & + & 15\% \text{ of } \frac{\quad}{\text{Total Payroll}} & + & 15\% \text{ of } \frac{\quad}{\text{Total Tangible Property}} & = \% \text{ to Minn.}
 \end{array}$$

An illustration of the weighing of the factors in the alternative formula as provided in Minnesota Statutes, section 290.19, subdivision 1, clause (1)(d) appears thus:

	Within Minn.	Weighted	Weighted Percentage
Sales	40%	70%	28.
Payroll	50%	15%	7.5
Tangible Property	70%	15%	10.5
			46.0%

Since under the fact situation used in this illustration, the weighted average formula determines a lesser Minnesota percentage ratio, the weighted ratio is used.

Subp. 3. Apportionment of net income under Minnesota Statutes, section 290.19, subdivision 1, clause (2). If the business does not consist of the manufacture and sale of personal property within and without the state, the taxable net income from such business shall be assigned to Minnesota on the basis of the percentage obtained by taking the arithmetic average of the three factors of (1) tangible property, (2) payroll, and (3) sales, gross earnings, or receipts, or on the basis of the percentage obtained by taking the weighted average of these three factors (15 percent of the Minnesota property percentage, 15 percent of the Minnesota payroll percentage, and 70 percent of the Minnesota sales, gross earnings, or receipts percentage), whichever is the lesser. The methods prescribed in this subpart are presumed to properly reflect the taxable net income assignable to this state.

The single factor of sales, gross earnings, or receipts may be used only if (1) the use of the arithmetic average of the three factors or the use of the weighted average of those factors, whichever is the lesser, will not properly reflect the taxable net income assignable to this state, and (2) the use of the single factor of sales, gross earnings, or receipts will properly and fairly reflect such income.

The separate or segregated accounting method may be used only where the business carried on within this state is not a part of a unitary business carried on both within and without this state. If this method is used, it is subject to the same limitations as those set forth in the preceding paragraph.

Subp. 4. Manufacture defined. Generally, the word "manufacture" is defined as the production of an article for use from raw or prepared materials by giving such materials new forms, qualities, or combinations, whether by hand labor or machine. Whether a taxpayer's business consists of manufacture of personal property is a question of fact to be determined in each individual case.

Subp. 5. Property element. The property element of the apportionment formula considered above shall include land, buildings, machinery, and equipment, inventories, and other tangible personal property actually used by the taxpayer during the taxable year in carrying on the business activities of the taxpayer. Tangible property which is to be separately allocated under Minnesota Statutes, sections 290.17 and 290.18 may not be considered as property includible in the apportionment factor. Cash on hand or in banks, shares of stock, notes, bonds, accounts receivable, or other evidences of indebtedness, special privileges, franchises, and good will, are specifically excluded from the property factor. The

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value of tangible property which is owned by the taxpayer and which is to be used in the apportionment fraction shall be the original cost adjusted for any subsequent capital additions or improvements and partial disposition by reason of sale, exchange, or abandonment. Property which is rented by the taxpayer is valued at eight times the net annual rental. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from subrentals. If the subrents taken into account in determining the net annual rental produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the Department of Revenue or requested by the taxpayer. In no case however shall such value be less than an amount which bears the same ratio to the annual rental paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. The valuations of property both within and without Minnesota shall be the averages during the year and must be on a commensurate basis. Rents paid during the year must not be averaged. The changes made in this subpart concerning the property factor are effective for taxable years beginning after December 31, 1982. A person filing a combined report shall use this method of calculating the property factor for all members of the group.

Subp. 6. Payroll element. The payroll element of the apportionment formula considered above shall be the payrolls paid or incurred by the taxpayer for the taxable year under review and wages or salaries paid or incurred in Minnesota shall be determined to be paid or incurred in Minnesota provided the individual with respect to whom such wages or salaries are paid is either employed within this state or is actually engaged in work in the territorial confines of this state or, if working without this state, is identified with or accountable to an office within this state.

The wages or salaries paid to officers and employees working from Minnesota offices are considered as Minnesota payroll even though their employment requires them to spend working time without this state. Officers and employees whose employment requires them to work without the state entirely and who are assigned to an office without Minnesota, are not considered Minnesota employees for the purpose of apportionment even though their salaries are paid from the taxpayer's general offices in Minnesota.

Statutory Authority: *MS s 290.52*

8017.4000 PETITION FOR APPLICATION OF OTHER THAN PRESCRIBED APPORTIONMENT METHOD.

The general rule is that the specific statutory methods prescribed in Minnesota Statutes, section 290.19 shall be employed in the determination of net income allocable to this state. However, any taxpayer feeling aggrieved by the application, to his case, of the method so prescribed may petition the commissioner of revenue for determination of such taxable net income on some other basis, including separate accounting.

The petition so filed should state:

- A. the name and address of the taxpayer;
- B. in a case of a corporation, the state of incorporation and the principal office or place of business;
- C. designation of the year involved;
- D. a statement of the kind, or kinds, of business in which the taxpayer is engaged, from which the income was derived for the taxable year stated in the petition;
- E. a detailed statement of the manner in which sales are effected within this state;
- F. a computation of Minnesota taxable net income in accordance with the method of assignment of income petitioned for; and

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G. a summary statement of the facts upon which the taxpayer relies to sustain his view that the application of the methods prescribed by Minnesota Statutes, section 290.19 will be unjust as applied to his case and that the method proposed will fairly reflect the taxable net income properly assignable to this state.

A petition within the meaning of Minnesota Statutes, section 290.20 shall be deemed to have been filed by the taxpayer if the taxpayer in his return uses a method other than the methods prescribed by Minnesota Statutes, section 290.19 and attaches to the return a statement setting forth the reasons for the use of such other method.

Statutory Authority: *MS s 290.52*

8017.5000 THE MULTISTATE TAX COMPACT.

Subpart 1. **In general.** Taxpayers who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, are subject to the following regulations as found in Multistate Tax Commission Allocation and Apportionment Regulations, revised February 21, 1973, which is incorporated by reference. Copies of the regulations are available at the Minnesota State Law Library, 117 University Avenue, Saint Paul, MN 55155, and other law libraries. The regulations have also been printed in State and Local Taxes, volume 1, All States Unit, Prentice Hall, Inc., Englewood Cliffs, New Jersey. All references to Article IV refer to Minnesota Statutes, section 290.171, article IV. Taxpayers who elect to apportion their income to Minnesota pursuant to Minnesota Statutes, chapter 290, without regard to Minnesota Statutes, section 290.171, article IV, are subject to Minnesota Rules, chapter 8019.

A. Regulation IV.1.(a), except that references to Regulations IV.1.(c) and IV.1.(b) shall be deleted;

B. Regulation IV.1.(d);

C. Regulation IV.2.(a)(1), in which case "taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state;

D. Regulation IV.2.(a)(2);

E. Regulation IV.2.(a)(3);

F. Regulation IV.2.(a)(4);

G. Regulation IV.2.(b)(1), except that the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined in accordance with Minnesota Statutes, section 290.171, article IV.4 to IV.12;

H. Regulation IV.2.(b)(2), except that the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing and except that "Article IV.9 to IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.4 to IV.12";

I. Regulation IV.2.(b)(3), except that "Article IV.4. to IV.8" is amended to read "Minnesota Statutes, section 290.171, article IV." Nonbusiness income shall be allocated in accordance with Minnesota Statutes, sections 290.17 and 290.19;

J. Regulation IV.2.(c);

K. Regulation IV.3.(a);

L. Regulation IV.3.(b), except that the term "tax administrator" is amended to read "commissioner of revenue" wherever it occurs;

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M. Regulation IV.3.(c);

N. Regulation IV.9, except that "Article IV.9" is amended to read "Minnesota Statutes, section 290.171, article IV.4";

O. Regulation IV.10.(a);

P. Regulation IV.10.(b);

Q. Regulation IV.10.(c);

R. Regulation IV.10.(d);

S. Regulation IV.11.(a);

T. Regulation IV.11.(b);

U. Regulation IV.12;

V. Regulation IV.13.(a);

W. Regulation IV.13.(b);

X. Regulation IV.13.(c), except that "Article IV.14" is amended to read "Minnesota Statutes, section 290.171, article IV.9";

Y. Regulation IV.14;

Z. Regulation IV.15.(a), except that in paragraph (1) "paragraphs (5) through (8) of Article IV" is amended to read "Minnesota Statutes, section 290.171, article IV";

AA. Regulation IV.15.(b);

BB. Regulation IV.15.(c);

CC. Regulation IV.16.(a);

DD. Regulation IV.16.(b);

EE. Regulation IV.17, except that in paragraph (1) "Article IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.12";

FF. Regulation IV.18.(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article IV.13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12";

GG. Regulation IV.18.(b); and

HH. Regulation IV.18.(c).

Subp. 2. Construction contractors. Long-term construction contractors who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to the Multistate Tax Commission Construction Contractor Regulation IV.18.(d), adopted July 10, 1980, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1." is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8" is amended to read "Minnesota Statutes, section 290.171, article IV";

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income see Regulation IV.1.(a) and (d)."

D. Clause (3), Methods of accounting and year of inclusion, is amended to read: "For general rules of accounting, definitions, and methods of accounting for long-term construction contracts see Minnesota Statutes, sections 290.01, subdivision 20, and 290.07."

E. In paragraph (4)(iv), "Article IV.10 to .12 inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .7 inclusive."

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F. In paragraph (4)(v), "Article IV.13 and .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8 and .9."

G. In paragraph (4)(vi), the reference to "Article IV.15 - .17 inclusive" is amended to read "Article IV.10 - .12, inclusive of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171."

Subp. 3. Railroads. Railroads which elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to Regulation IV.18.(f), adopted July 16, 1981, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1" is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8, inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV."

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.(a) and (d)."

D. In clause (3)(ii)A, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

E. In clause (3)(ii)B.3, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

F. In clause (3)(ii)B.4, "Article IV.12" is amended to read "Minnesota Statutes, section 290.171, article IV.7."

G. In clause (3)(ii)B.5, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

H. In clause (3)(ii)C., "Article IV.10 - .12 inclusive," is amended to read "Minnesota Statutes, section 290.171, article IV.5-.7, inclusive."

I. In clause (3)(ii)C.(iii), "Article IV.13 - .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8-.9."

J. In the second paragraph of clause (3)(ii)C.(iv)A., "Article IV.15 - .17" is amended to read "Minnesota Statutes, section 290.171, article IV.10-.12."

Statutory Authority: *MS s 290.52*

History: *10 SR 478*