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OFFICE OF THE ATTORNEY GENERAL

PEACE OFFICER TRAINING BOARD

RULES RELATING TO PEACE OFFICER TRAINING AND THE REIMBURSEMENT PROGRAM

ATTY. GEN. 201 Definitions. For the purposes of these rules, the following terms shall have the meanings given them:

A. "Appointing agency" means the public official, board, commission, or other person or group of persons responsible for the initial appointment and continued tenure of a person employed as a peace officer.

B. "Basic course" means a course of training as described in Section 202 of these rules, or a course which has been approved by the Executive Director in writing, as meeting or exceeding the minimum course content as prescribed in Section 202 of these Rules.

C. "Board" means the Minnesota Peace Officer Training Board.

D. "Bureau" means the Division of Bureau of Criminal Apprehension, Department of Public Safety of the State of Minnesota.

E. "Director" means the director or head of a peace officers training school.

F. "Executive Director" means Executive Director of the Minnesota Peace Officers Training Board.

G. "Instructor" means a person certified by the Executive Director as qualified to teach at a training school.

H. "Lecturer" means a person possessing a sufficient educational background or experience necessary to meet instructional demands made of him.

I. "Municipality" means any county, city, town, or other political subdivision of the state.

J. "Peace officer" means any employee of a municipality or state law enforcement agency paid by public funds who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest; and shall also include Minnesota Highway Patrol and state conservation officers.

K. "School" means any training school which has been certified by the Executive Director of the Minnesota Peace Officer Training Board for the purpose of training peace officers.

L. "Trainee" means a person enrolled in a certified training school. The term also means any person enrolled in a certified training school conducted by the Bureau, whose attendance is authorized by the provisions of Minn. Stat. § 626.851, subd. 2, and complies with the rules as stated herein.

ATTY. GEN. 202 Minnesota peace officer basic course.

A. Statement of purpose. The course described in subsection E. is a minimum program. Nothing contained in these rules shall limit or be construed as limiting the power of any appointing agency to enact rules which establish a higher standard of training above the minimum required by these rules; or which provide for termination of employment due to unsatisfactory service during probationary periods, or due to violation of the rules of the law enforcement agency employing a peace officer.

B. Each trainee enrolled in the basic course shall maintain an adequate notebook during the course and shall submit such notebook upon demand to the director. In addition to appropriate entries on material covered during the course, the notebook shall also contain all the trainee's written assignments.

C. The assembling of examination materials, the giving and supervising of the examinations, and the review of the examination papers shall be the responsibility of the director. The director shall file a copy of any examination upon request of the Executive Director.

D. A score of less than 70 on any exam may be cause for requiring the trainee to repeat the material covered at the next session, prior to issuance of the certificate, but no certification shall be issued if the trainee receives less than a score of 70 overall average on all exams. A score of less than 70 on two weekly examinations shall be cause for suspension from the school. Trainees must attain a minimum score of 70 in the first aid and firearms training. However, these numerical scores shall not be included in computing the scholastic overall average.

E. The minimum amount of training for which cer-

tification can be granted by the Executive Director shall be 280 hours including the following:

1.	Registration — Orientation	1 hour
2.	Classroom Notetaking & Study Skills	2 hours
3.	Jurisdiction of State & Federal Agencies	11 hours
4.	Criminal Laws for Police	57 hours
5.	Administration of Justice	8 hours
6.	Police Patrol Functions & Techniques	21 hours
7.	Traffic Law Enforcement	27 hours
8.	Human Behavior	16 hours
9.	Investigation of Crimes	45 hours
10.	Report Writing & Records	7 hours
11.	First Aid	25 hours
12.	Physical Training & Skills, including basic firearms instruction	36 hours
13.	Crime Prevention	2 hours
14.	Testing & Review	14 hours
15.	Elective Time	8 hours

F. The elective time portion of a basic course shall be approved by a resolution of the Board.

ATTY. GEN. 203 Attendance and completion information.

A. Attendance shall be required of each trainee at all sessions of any course. Any trainee who is absent for more than one day of any course shall make up such course content to the satisfaction of the director.

B. Enrollment in any training course shall not exceed 40 trainees; provided that if the Executive Director determines that an exigency exists, an exemption may be granted from this provision.

C. Eligible peace officers applying for enrollment in any certified training course shall receive priority acceptance.

D. All trainees must be physically and psychologically capable of complete participation in all course activities. Any trainee unable to physically or psychologically participate in all aspects of the course shall not be deemed to have satisfactorily completed the course and shall not be certified as having done so.

E. All trainees enrolled in any certified school shall be subject to the rules and procedures for the conduct of such course as promulgated by the certified school and filed with the Board. Notebooks and handout materials distributed to the trainee shall remain the property of the certified school until the trainee has satisfactorily completed the course.

F. The director shall be responsible for maintaining and making available to the Board and Executive Director all pertinent information on all training courses conducted at the school. All courses shall be subject to periodic review and evaluation by the Board.

ATTY. GEN. 204 Instructors.

A. Qualifications. All instructors in certified schools must have at least a high school diploma or a certificate of equivalency and two years of experience as a peace officer or a college degree.

B. Certification of instructor. Each instructor at a certified school must be certified annually by the Executive Director. No certification will be issued until the instructor files a lesson plan for each subject taught which is accepted by the Executive Director.

C. These rules shall not preclude a director from engaging lecturers in specialized courses. All members of Federal law enforcement agencies are exempt from the certification requirements for instructors set forth herein.

ATTY. GEN. 205 Certification of schools; approval procedure.

A. Before a certification is issued by the Executive Director to any school, the director of the school must file with the Board satisfactory proof that the school will offer the mandatory courses, if any; has the necessary equipment, and has qualified instructors. Further, the director shall also file with the Board such other information as the Executive Director requires, including rules and procedures for the conduct of trainees enrolled in the courses.

B. The director of the school shall file all information required at least 30 days prior to the commencement of each proposed course, including the proposed maximum enrollment in such course.

ATTY. GEN. 206 Certification of peace officers.

A. All peace officers, except those excluded in Minn. Stat. § 626.846, subd. 1, and Minn. Stat. § 626.853,

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must commence attendance in a certified basic course at a certified school within one year from the time of their appointment and successfully complete such course within six months of the date of enrollment.

B. The Executive Director shall issue certificates of compliance with the provisions of Minn. Stat. § 626.846 to each peace officer who has satisfactorily completed a basic course as certified by the director.

C. The Executive Director shall issue a certificate of compliance to a trainee who, pursuant to Minn. Stat. § 626.851, subd. 2, has attended and satisfactorily completed a certified basic course conducted by the Bureau and who has, within six months of such completion, been employed as a peace officer as the term is defined in Rule 201 J. of these Rules when such certification is requested by the head of the employing agency following successful completion of that agency's probationary period. This probationary period shall, in no event, be less than one year.

D. All certificates of compliance awarded by the Board pursuant to Rule 206 shall be deemed to remain the property of the Board and shall be void after six months from the date the individual named thereon terminates employment as a peace officer. The certificate issued may be subject to revocation and recall by the Board for just cause in the event that the termination of employment of the peace officer occurs involuntarily. In the event the Board proceeds to revoke and recall a certificate as provided for herein, the proceeding shall be subject to the provisions of Minn. Stat. §§ 15.0418 to 15.0424.

E. A peace officer who holds a valid certificate of compliance under the provisions of Rule 206 need not seek recertification solely because of appointment to a new position or election to public office; provided, that the assumption of duties in the new position or elected office occurs within six months of termination of previous appointment as a peace officer.

F. Notwithstanding the provisions of these rules relating to the completion of a certified basic course, the Executive Director may issue a certification of compliance to an experienced peace officer who has received training equivalent to that offered at a certified school when a request for such certification is made in writing by the appointing agency. No person shall be subject to this provision unless, in the four years prior to the application hereunder, at least two years of employment was that of a full-time peace officer. The Executive Director shall require detailed information on the applicant's previous training and experience in law enforcement, and passing by the applicant of an examination approved by the Board on the subjects enumerated in Rule 202 E., before a certificate is issued.

G. If a person applying for exemption pursuant to Rule 206 F. submits fraudulent information, any certificate issued is void.

ATTY. GEN. 207 New peace officers.

A. All appointing agencies, when requested, shall furnish the name, address, date of appointment, and other pertinent information concerning a newly appointed peace officer to the Executive Director.

B. No appointing agency shall appoint any new peace officer who does not comply with the minimum selection standards hereinafter enumerated; provided, that these standards shall not be construed to restrict an appointing agency from promulgating more rigid standards in the areas enumerated.

1. The applicant must be a citizen of the United States.

2. The applicant must possess or be eligible for a valid State of Minnesota driver's license.

3. The applicant must successfully pass a written examination demonstrating the possession of all mental skills necessary for the accomplishment of the duties and functions of a peace officer.

4. The applicant shall be required to complete and submit to the appointing agency a preliminary application form before testing and a comprehensive application form after testing and just prior to hiring. The prospective employee shall be fingerprinted, and a thorough background search shall be made through the resources of local, state and Federal agencies in order to disclose the existence of any criminal record or the existence of unacceptable standards of conduct which would adversely affect the performance by the individual of his duties as a peace officer.

5. The applicant shall not have been convicted of a felony in this state or in any other state or in any Federal jurisdiction, or of any offense in any other state or in any Federal jurisdiction, which would have been a felony if committed in this state.

6. A licensed physician or surgeon shall make a thorough medical examination of the applicant to determine that he or she is free from any physical condition which might adversely affect the performance by the individual of his duties as a peace officer.

7. An evaluation shall be made by a licensed psychologist to determine that the applicant is free from any emotional or mental condition which might adversely affect the performance by the individual of his or her duties as a peace officer.

8. The applicant must successfuly pass a job-related examination of his or her physical strength and agility demonstrating the possession of physical skills

necessary to the accomplishment of the duties and functions of a peace officer.

9. The applicant must successfully complete an oral examination conducted by or for the appointing agency to demonstrate the possession of communication skills necessary to the accomplishment of the duties and functions of a peace officer.

ATTY. GEN. 208 (Repealed)

ATTY. GEN. 209 (Repealed)

Reimbursement Program of the Minnesota Peace Officer Training Board

ATTY. GEN. 210 Statement of purpose. An increase in the minimum number of weeks required for the basic training of peace officers has created additional cost to the local units of government. The reimbursement program of the Minnesota Peace Officer Training Board will, subject to the availability of funds, assist local units of government to pay the salary and expenses of a peace officer who has successfully completed a basic training course, or a training course for supervisory personnel and will help to absorb the cost of providing substitute protection while these peace officers are being trained. Therefore, the following rules are promulgated pursuant to Minn. Stat. § 626.844.

ATTY. GEN. 211 Definitions.

A. The term "reimbursement funds" means money which has become available to the Minnesota Peace Officer Training Board for use by local units of government to defray the cost of salaries, expenses, and substitute protection incurred during the basic training of peace officers or the training of supervisory personnel.

B. The term "local unit of government" means any county, city or town, acting either jointly or individually.

C. The term "peace officer" as used in Rules 210 through 217 shall have the same meaning as promulgated in Atty. Gen. 201 J.

ATTY. GEN. 212 Eligibility for program.

A. Any appointing agency which meets the following criteria will be eligible to receive reimbursement funds to help defray the cost of salaries, expenses and substitute protection incurred during the training of peace officers.

B. The appointing agency shall have complied with the minimum selection standards set forth in Atty. Gen. 207 B.

C. The local unit of government shall not require a peace officer to work while he is attending the basic training school unless it is a part of the training program.

D. The peace officer for whom a local unit of government is requesting reimbursement funds must have successfully completed the course enrolled in.

E. All reports requested by the Minnesota Peace Officer Training Board must be filed by the local unit of government or the law enforcement agency thereof.

ATTY. GEN. 213 Application for funds.

A. Application for funds shall be made on reimbursement request forms provided by the Minnesota Peace Officer Training Board.

B. Individual forms must be submitted for each peace officer who has successfully completed a basic training course or a course for the training of supervisory personnel and for whom the local unit of government seeks reimbursement funds.

C. The application for reimbursement funds shall be submitted on behalf of the local unit of government by an official designated by resolution of the governing body. Verification of compliance with these rules shall accompany the application and shall be made in writing by the person in charge of the law enforcement agency of the local unit of government.

ATTY. GEN. 214 Approval of application.

A. Approval of the application shall be by the Executive Director of the Minnesota Peace Officer Training Board who shall determine whether the request for reimbursement funds is in proper form and whether the local unit of government meets the eligibility criteria enumerated in Rule 212.

B. After the Executive Director of the Minnesota Peace Officer Training Board has approved the reimbursement request, he shall recommend payment and forward the request form through the appropriate state agencies for disbursement of funds.

C. Upon approval, each local unit of government shall be entitled to an equal share for each peace officer trained from the funds designated for such reimbursement, provided that the eligibility criteria enumerated

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in Rule 212 have been fulfilled for all trainees who begin courses subsequent to the effective date of these regulations. Any such award shall be conditioned upon the availability of funds.

D. When funds are made available for reimbursement for mandated courses other than basic training, a local unit of government shall, upon approval, be entitled to an equal share for each peace officer who completes such a course, provided that the eligibility criteria enumerated in Rule 212 have been fulfilled for all trainees who begin courses subsequent to the effective date of these regulations. Any such award shall be conditioned upon the availability of funds.

E. A local unit of government is not deemed eligible for reimbursement herein when it receives a subsidy from a state or Federal agency or program to assist paying a trainee's salary; provided, that if no expenses are allowed under such program, the Executive Director may authorize reimbursement for expenses only in an amount not to exceed $30.00 per week of training per trainee.

ATTY. GEN. 215 Deadline for filing applications. Applications for reimbursement must be submitted within 60 days after receipt of the application forms.

ATTY. GEN. 216 Mandatory training for newly appointed supervisory personnel. All peace officers appointed to positions in which they will supervise five or more persons shall attend a course for the training of supervisory personnel no later than six months after they have assumed their supervisory duties. This course shall be one approved in writing by the Executive Director, and it shall be at least one week in length. Chiefs of police and sheriffs are excluded from this requirement.

ATTY. GEN. 217 (Repealed)

ATTY. GEN. 218 (Repealed)

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

PROPOSED INCOME TAX REGULATIONS

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412, Subd. 4, (1974), as amended by Laws 1975, Chapter 380, in the above-entitled matter, in the State Office Building Auditorium (Room 83), Wabasha Street (between Aurora and Fuller Avenues), St. Paul, Minnesota, on September 15, 16, and 17, 1976, commencing at 9:00 a.m. and continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Persons may submit written statements or briefs without appearing at the hearing. Written materials will be accepted for a period of twenty (20) calendar days following the close of the hearing.

The Commissioner, pursuant to the authority vested in him by Minn. Stat. § 290.52, (1974), proposes to repeal the rules currently in effect and adopt new rules relating to taxation of income.

Copies of the proposed new rules are available and may be obtained by writing to Wood R. Remington, Research Attorney, Income Tax Division, Centennial Office Building, St. Paul, Minnesota 55145. Copies will also be available at the door on the date of the hearing.

Persons who wish to present oral comments in addition to written comments or suggestions are requested to submit to Wood R. Remington, Research Attorney, Income Tax Division, by September 10, 1976, an outline of the topics and the time they wish to devote to each topic.

Notice is also given that under Minn. Stat. § 10A.01, Subd. 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

Arthur C. Roemer
Commissioner of Revenue

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706	2007(5) - 3	906	2009(5)	1800-1806	2053
707	2007(5) - 4	907	2009(6)	1900-1909	2093
708	2007(5) - 5	908	2009(7)	2000-2018	2093.1-2093.5
709	2007(5) - 6	909	2009(8)	2100-2113	2097.1-2097.5
710	2007(5) - 7	910	2009(10)	2201	2052
711	2007(5) - 8	911	2009(16)	2202	2057
712	2007(6) - 1	912	2009(17)	2203	2061
713	2007(6) - 2	913	2009(18)	2205-2209	2065
714	2007(6) - 3	914	2009(19)	2210	2028.1
715	2007(6) - 4	915	2009(21)	2211	2029
716	2007(7)	916	2009(22)	2212	2030
717	2007.1 (1)	923-932	2009.5	2213	2035
718	2007.1 (5)	1000-1006	2010	2214-2215	2036.1
719	2007.2	1100-1102	2012	2216-2217	2031
720	2007.3	1103	2013-2013.1 to 2013.7	2218	2056(1)
721	2007.5	1104-1108	2016	2219	2056(2)
723	2011	1200-1201	2017	2220	2056(3)
724-725	2032	1202	2018	2300	2092
726	2033	1203	2019		

Chapter One: Definitions

INCT 100 Partnerships. The term "partnership" includes the following:

A. syndicates

B. groups

C. pools

D. joint ventures

E. other unincorporated organizations through or by means of which any business, financial operation or venture is carried on and which is not, within the meaning of this Act, a trust, estate or corporation.

The term "partner" includes a member in such a syndicate, group, pool, joint venture or unincorporated organization.

Some of the characteristics which must be present in a partnership are enumerated as follows:

1. An agreement between two or more parties to engage in a specific business or undertaking;

2. an investment by each partner of capital or services, or both;

3. a mutual right to contract debts in the name of the partnership;

4. a mutual liability to the debts contracted;

5. a right to an annual accounting and division of the profits or losses; and

6. a termination of the partnership upon the death of a partner or upon a change in the ownership of a participating interest.

Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or a part ownership does not of itself establish a partnership whether such co-owners do or do not share any profits made by the use of the property. The sharing of gross returns does not of itself establish a partnership whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

An organization which is in form a partnership may be considered an association taxable as a corporation if

a. it is not interrupted by the death of a member or change in the ownership of a participating interest during the agreed period of its existence, and

b. its management is centralized in one or more persons in their representative capacities.

INCT 101 Corporations.

A. In general. — The term "corporation" includes joint stock companies and corporations existing under the laws of any state or country; certain partnerships; associations (other than ordinary partnerships) and common law trusts organized or conducted for profit.

B. Certain partnerships classified as corporations. — An organization which is in form a partnership may be considered an association taxable as a corporation if

1. it is not interrupted by the death of a member or change in the ownership of a participating interest during the agreed period of its existence, and

2. its management is centralized in one or more persons in their representative capacities.

If a partnership is classified as a "corporation," the income received by the members from the earnings of such partnership will be treated in their personal returns in the same manner as dividends from corporations.

C. Limited partnerships. — For all taxable years beginning with and subsequent to 1939, a limited partnership is classified for the purpose of this Act as an ordinary partnership, or, on the other hand, as an association taxable as a corporation, depending upon its character in certain material respects. If the organization is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and if the management of its affairs is centralized in one or more persons acting in a representative capacity, it is taxable as a corporation. For want of these essential characteristics, a limited partnership is to be considered as an ordinary partnership, notwithstanding other characteristics conferred upon it by local law.

D. Certain trust classified as corporations. — In cases where trustees hold property for the collection of the income and its distribution among the beneficiaries of the trust, the trust is not classified as a "corporation." Where the trustees are not restricted to the mere collection of funds and their payment to the beneficiaries but possess powers similar to those exercised by the directors in a corporation for the purpose of carrying on a business enterprise, the trust is classified as a "corpor-

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ation." The distinction is that between the activity or purpose for which an ordinary, strict trust of the traditional type would be created and the activity or purpose for which a corporation for profit might have been formed.

INCT 102 Resident. The term "resident" means any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such tax year, have been domiciled outside the state. Residence is the place where a person is domiciled.

A person who maintains his principal place of abode within Minnesota shall be considered a resident of this state. Minnesota residence, once established, is presumed to continue and shall not terminate when a person goes into another state for temporary or transitory purposes only. A person who maintains his principal place of abode outside of Minnesota shall not be considered a Minnesota resident.

The residence of a single person shall be the place where he usually stays, provided that the residence of an unemanicipated minor shall ordinarily be the residence of one or both parents.

A person and his or her spouse shall ordinarily have the same place of residence. The place where a married person's family resides shall ordinarily be considered his or her residence.

A change of state residence shall be recognized when a person changes his principal place of abode from one state to another. In determining whether a change of residence has occurred, regard shall be given to the person's intention. Intention may be shown by acts and declarations, and acts shall generally be given more weight than declarations.

INCT 103 Fiduciary. A fiduciary means a guardian, trustee, personal representative, receiver, conservator, or any person acting in any position of peculiar confidence toward other persons or corporations. For income tax purposes a fiduciary is a person who holds in trust an estate to which another has the beneficial title or interest, or receives and controls the income of another, as in the case of receivers.

An agent is not necessarily a fiduciary, although a fiduciary relationship may exist between a principal and an agent. For instance, a real estate agent may be in complete control of the management of property with authority to execute leases and deal with tenants entirely on his own recognizance, periodically turning over the net proceeds from the rental of the property to his principal. Even though such agent receives this authority by virtue of power of attorney he is not a fiduciary within the meaning of the Act. In any case where business is transacted through the principle of agency, and no legal trust has been created, the liability under this Act to file returns rests with the principal.

INCT 104 Gross income.

A. Individuals, estates, and trusts — For taxable years beginning after December 31, 1960 and prior to January 1, 1971, the term "gross income" of individuals means the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended for the applicable tax years, with the modifications for those years.

For taxable years beginning after December 31, 1970 and prior to January 1, 1973, the term "gross income" of individuals means the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through December 31, 1970, with the modifications for those years.

For taxable years beginning after December 31, 1972, the term "gross income" of individuals means the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through December 31, 1972, with the following modifications.

For taxable years beginning after December 31, 1973, the term "gross income" of individuals means the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through December 31, 1973, with the following modifications.

For taxable years beginning after December 31, 1974, the term "gross income" of individuals means the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through December 31, 1974, with the following modifications.

Modifications

1. Additions

a. Interest income on obligations of any state other than Minnesota or a political subdivision of any such other state exempt from federal income taxes;

b. Interest income on obligations of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax, but not from state income taxes;

c. Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

d. Interest on indebtedness incurred or continued to purchase or carry securities the income from which is exempt from tax under Chapter 290, to the extent deductible in determining federal adjusted gross income;

e. Amounts received as reimbursement for an expense of sickness or injury which was deducted in a prior taxable year to the extent that the deduction for such reimbursed expenditure resulted in a tax benefit;

f. Losses which do not arise from events or transactions which are assignable to Minnesota under the provisions of Minn. Stat. § 290.17 to 290.20, including any capital loss or net operating loss carryforwards or carrybacks resulting from losses, and including any such non-assignable losses which occur prior to the time the individual becomes a resident of the state of Minnesota;

g. The amount of any federal income tax overpayment for any previous taxable year, received as refund or credited to another taxable year's income tax liability, proportionate to the percentage of federal income tax that was claimed as a deduction in determining Minnesota income tax for such previous taxable year.

The overpayment refund or credit, determined with respect to a husband and wife on a joint federal income tax return for a previous taxable year, shall be reported on joint or separate Minnesota income tax returns. In the case of separate Minnesota returns, the overpayment shall be reported by each spouse proportionately according to the relative amounts of federal income tax claimed as a deduction on his or her separate Minnesota income tax return for such previous taxable year;

h. In the case of change of residence from Minnesota to another state or nation, the amount of moving expenses which exceed total reimbursements and which were therefore deducted in arriving at federal adjusted gross income;

i. In the case of property disposed of on or after January 1, 1973 the amount of any recapture of federal investment credit to the extent that it was previously allowed as a deduction from federal adjusted gross income on the Minnesota income tax return.

j. For taxable years beginning on or after January 1, 1974, expenses and losses arising from a farm to the extent they are not allowed as a deduction under Minn. Stat. § 290.09, subd. 29.

k. For taxable years beginning after December 31, 1975, expenses and depreciation attributable to substandard buildings disallowed by Minn. Stat. § 290.101.

l. An amount determined by computing a percentage of the gain realized on the sale of a farm, reduced by the amount of such gain included in federal adjusted gross income, when a family farm loan has been obtained for the purchase of farm land under Minn. Stat. ch. 210 and such land is sold by the purchaser within nine years of the date the loan was issued.

2. Subtractions

a. Interest income on obligations of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income tax under the laws of the United States;

b. The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to 50 per centum of such portion of the gain;

c. Interest or dividend income on securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such securities but includible in gross income for federal income tax purposes;

d. Income which does not arise from events or transactions which are assignable to Minnesota under the provisions of Minn. Stat. § 290.17 to 290.20 (inclusive);

e. Losses, not otherwise reducing federal adjusted gross income assignable to Minnesota, arising from events or transactions which are assignable to Minnesota under the provisions of Minn. Stat. § 290.17 to 290.20 (inclusive) including any capital loss or net operating loss carryforwards or carrybacks resulting from such losses;

f. If included in federal adjusted gross income, the amount of any overpayment of income tax to Minnesota, or any other state, for any previous taxable year, whether such amount is received as a refund or credited to another taxable year's income tax liability;

g. The amount of any pension or benefit received from the United States, from the State of Minnesota and any of its subdivisions, or from other states and their political subdivisions, which is excluded from gross income under the provisions of Minn. Stat. § 290.08, subd. 6.

h. The amount of compensation for personal

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services in the armed forces of the United States or the United Nations which is excluded from gross income under the provisions of Minn. Stat. § 290.65;

i. In the case of property acquired on or after January 1, 1973 the amount of any investment credit under Section 38 of the Internal Revenue Code, to the extent that it is connected with or allocable against the production or receipt of income taxed by Minnesota.

B. Corporations

The term "gross income" of corporations includes:

1. Every kind of compensation for labor or personal services of every kind from any private or public employment, office, position, or services

2. Income derived from the ownership or use of property

3. Gains or profits derived from every kind of disposition of, or every kind of dealing in, property

4. Income derived from the transaction of any trade or business

5. Income derived from any source

C. Shareholders in small business corporations

1. Shareholders in a small business corporation, which has elected to be so taxed under the Internal Revenue Code of 1954, applicable to the year in question, but has not made an election under Minn. Stat. § 290.972, shall deduct from federal adjusted gross income the amount of any imputed income from such corporation and shall add to federal adjusted gross income the amount of any loss claimed as a result of such stock ownership. Also there shall be added to federal adjusted gross income the amount of any distributions in cash or property made by said corporation to its shareholders during the taxable year.

2. In cases where the small business corporation has made an election under section 1372 of the Internal Revenue Code of 1954, applicable to the year in question, but has not elected under Minn. Stat. § 290.972 and said corporation is liquidated or the individual shareholder disposes of his stock and there is no capital loss reflected in federal adjusted gross income because of the fact that corporate losses have exhausted the shareholders basis for federal purposes, such shareholders shall be entitled, nevertheless, to a capital loss commensurate to their Minnesota basis for the stock.

3. In cases where the election under section 1372 of the Internal Revenue Code of 1954, applicable to the year in question, antedates the election under Minn. Stat. § 290.972 and at the close of the taxable year immediately preceding the effective election under Minn. Stat. § 290.972 the corporation has a reserve of undistributed taxable income previously taxed to shareholders under the provisions of the Internal Revenue Code of 1954, applicable to the year in question, in the event and to the extent that such reserve is distributed to shareholders such distribution shall be taxed as a dividend.

D. Administration expenses — Estates

1. Amounts allowable under Minn. Stat. § 291.07, Subd. 1(2) (relating to administration expenses) as deductions in computing the taxable estate of a decedent are not allowed as deductions in computing the taxable income of the estate unless there is filed a statement, in duplicate, to the effect that the items have not been allowed as deductions from gross estate of the decedent under Minn. Stat. § 291.07, Subd. 1(2) and that all rights to have such items allowed at any time as deductions under Minn. Stat. § 291.07, Subd. 1(2) are waived. The statement should be filed with the return for the year for which the items are claimed as deductions or with the Commissioner for association with the return. The statement may be filed at any time before the expiration of the statutory period of limitation applicable to the taxable year for which the deduction is sought. Allowance of the deduction in computing an estate's taxable income is not precluded by claiming a deduction in the inheritance tax return, so long as the inheritance tax deduction is not finally allowed and the statement is filed. However, after a statement is filed under Minn. Stat. § 290.01, Subd. 20(d) with respect to a particular item or portion of an item, the item cannot thereafter be allowed as a deduction for inheritance tax purposes since the waiver operates as a relinquishment of the right to have the deduction allowed at any time under Minn. Stat. § 291.07 Subd. 1(2).

2. It is not required that the total deductions, or the total amount of any deduction, to which Minn. Stat. § 290.01, Subd. 20 (d) is applicable be treated in the same way. One deduction or portion of a deduction may be allowed for income tax purposes if the appropriate statement is filed, while another deduction or portion is allowed for inheritance tax purposes. Minn. Stat. § 290.01, Subd. 20(d) has no application to deductions for taxes, interest, business expenses, and other items accrued at the date of a decedent's death so that they are allowable as a deduction under Minn. Stat. § 291.07, Subd. 1(4) for inheritance tax purposes as claims against the estate, and are also allowable under Minn. Stat. § 290.077, Subd. 2 as deductions in respect of a decedent for income tax purposes. However, Minn. Stat. § 290.01, Subd. 20(d) is applicable to deductions for interest, business expenses, and other items not accrued at the date of the decedent's death so that they are allowable as deductions for inheritance tax purposes only as administration expenses under Minn. Stat. 291.07, Subd. 1(2). Although deductible under Minn. Stat. § 291.07, Subd. 1(4) in determining the value of the taxable estate of a decedent, medical, den-

tal, etc., expenses of a decedent which are paid by the estate of the decedent are not deductible in computing the taxable income of the estate.

3. No deductions shall be allowed for administration expenses, taxes, interest, business expenses and other items connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this Act. See INCT 1005.

Chapter Two: Employer's Excise Tax

INCT 200 Rate of tax. The tax is two mills per dollar on the taxable compensation (wages) paid by an employer to his employees after June 30, 1973. For each taxable year there is an exclusion of $100,000. This exclusion can be divided between divisions of a corporation or it can be prorated over the four quarters of the taxable year.

Where the taxable year is a period of less then 12 months the $100,000 exclusion is proportionately reduced.

Example: If an employer liquidated his business on October 1, 1973 he would be allowed 3/12 of $100,000 or $25,000 wage exclusion.

For purposes of administration the $100,000 exclusion will be allowed on a calendar year basis regardless of the taxable year of the employer.

Should the taxable net income for any taxable year be $0 or less the tax is reduced to one mill per dollar. This reduction in the tax is not applicable to any organization whose income is not taxable under Minn. Stat. § 290.05, but which is subject to this excise tax.

INCT 201 Exempt employers. The following employers are exempt from this two mill excise tax:

A. Railroads, freight line companies, express companies, sleeping car companies and taconite railroad companies.

B. Organizations exempt under the provisions of Minn. Stat. § 290.05, subd. 1 (h), (i), (l), and (m) as follows:

"(h) Corporations operating or conducting public burying grounds, public schoolhouses, public hospitals, academies, colleges, universities, seminaries of learning, churches, houses of worship, and institutions of purely public charity, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(i) Any corporation, fund, foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes, or for the purpose of making contributions to or for the use of the United States of America, the state of Minnesota or any of its political subdivisions for exclusively public purposes, or for any combination of the above enumerated purposes, if no part of the net income of any such corporation, fund, foundation, trust or assocation inures to the benefit of any private member, stockholder, or individual;

(l) Any corporation all the stock of which is owned by the United States or which may be exempt from a state franchise or income tax by federal law;

(m) The United States of America, the state of Minnesota or any political subdivision of either agencies or instrumentalities, whether engaged in the discharge of governmental or proprietary functions;"

INCT 202 Taxable net income. Taxable net income is as defined by Minn. Stat. § 290.18 and 290.19 for the taxable year without the

A. allowances for all income taxes paid or accrued,

B. the 50 percent deductions allowed for long term capital gains,

C. net operating loss deductions, and

D. non-business deductions. The employers excise tax cannot be used as a deduction to reduce the taxable net income to $0 or less.

INCT 203 Compensation. Compensation or wages is that figure arrived at in computing the total wages for unemployment compensation purposes without any limitations (line 2 on the Minnesota Department of Employment Services. Quarterly Report, Form MES-1).

INCT 204 Refunds. If an employer makes an overpayment of the employer's excise tax, the amount of such overpayment will be refunded upon application of the employer. The overpayment may also be credited to the liability of succeeding quarters if the employer so desires.

A refund situation will normally result when the employer's taxable net income for his taxable year is $0 or less. The employer will then compute the excise tax on the taxable compensation for such taxable year at a one mill per dollar rate.

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Example: The employer's taxable year ending July 1, 1974 indicated a taxable net loss of $30,000. The excise tax and refund would be computed as follows:

Taxable Wages:

July, August & September	1973	$110,000
October, November & December	1973	120,000
January, February & March	1974	80,000
April, May, June	1974	130,000
		$440,000

Excise Tax Paid:

1973 $230,000—50,000 x .002=	$360	
1974 $210,000—100,000 x .002=	$220	
		$580.00
Recomputation at 1 mill rate: $440,000—$100,000 x .001=		$340.00
Refund Due Employer:		$240.00

Chapter Three: Exempt Organizations

INCT 300 Returns. Certain corporations, individuals, estates, trusts and organizations which claim to be exempt from income tax or excise tax under the provisions of Minn. Stat. § 290.05 must satisfy the following requirements. Those claiming exemption must file a Request for Exempt Classification (farmers' cooperatives use Form 120, all others use Form 120(a)). If exempt from federal income tax, proof of such federal exemption must also be submitted. The application and all information submitted is reviewed and the applicant is notified whether it is considered to be exempt from income tax or excise tax.

Those claiming exemption must also submit each year a copy of any reports made to the Internal Revenue Service (Series 990 returns) within ten days of the date submitted to the federal government. They must also notify the Commissioner of Revenue within 90 days if federal exemption is revoked, cancelled or suspended. Any change in the organization, its purposes or operation must also be reported to the Commissioner of Revenue.

The above requirements pertain to the following:

Fraternal beneficiary associations wherever organized.

Cooperative or mutual rural telephone associations.

Public department relief associations of public employees of the State of Minnesota, or of any of its political subdivisions.

Labor, agricultural and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

Cooperative associations of farmers, fruit growers or livestock raisers as set forth in Minn. Stat. § 290.05, subd. 1(g) and (n).

Business leagues and commercial clubs, not organized for profit, and no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

Clubs organized and operated exclusively for pleasure, recreation or other non-profitable purposes, no part of the net income of which inures to the benefit of any private member, stockholder or individual.

Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount hereof, less expenses, to an organization which itself is exempt from Minnesota income tax.

Voluntary employees' beneficiary associations providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents if no part of their net earnings (other than through such payments) inures to the benefit of any private shareholder or individual.

A corporation, fund, foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational or artistic purposes, or for the purpose of making contributions to or for the use of the United States of America, the State of Minnesota or any of its political subdivisions for exclusively public purposes, or for any combination of the above enumerated purposes, if no part of net income inures to the benefit of any private member, stockholder or individual.

INCT 301 No returns. The following are exempt from Minnesota income tax but are not required to submit a Request for Exempt Classification or returns to the Commissioner of Revenue.

The United States of America, the State of Minnesota, or any political subdivision of either agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions.

Any corporation all the stock of which is owned by the United States or which is exempt from a state franchise or income tax by federal law.

Corporations operating or conducting public burying grounds, public school houses, public hospitals, academies, colleges, universities, seminaries of learning, churches, and houses of worship, no part of the net income of which inures to the benefit of any private member, stockholder or individual.

Credit Unions organized under Minnesota law.

Farmers' mutual insurance companies, incorporated in Minnesota.

INCT 302 Farmers, fruit growers, and like associations. It will be observed that Minn. Stat. § 290.05 sets out specific requirements that a cooperative organization must meet before it can establish its exempt status under Minn. Stat. § 290.05. Stated generally, these requirements are as follows:

A. Only cooperative associations whose ownership rests in farmers, fruit growers, or livestock growers may claim exemption under Minn. Stat. § 290.05. Cooperative associations marketing agricultural products or supplies but not substantially owned by farmers are not entitled to exemption under Minn. Stat. § 290.05.

B. Proceeds of sales of products marketed or processed and marketed must be returned, either currently or at some later date, to farmers less actual operating expenses.

C. Proceeds of sales of supplies and equipment purchased for farmers must be returned to them at actual cost plus the necessary expenses.

D. In order that the requirements of clauses B. and C. above may be carried out it is necessary that a record be kept of each patron's interest in any earnings which are not paid in cash. The records should then disclose in lieu of the usually termed surplus account, a reserve for patronage dividends, patrons equity reserve, or some other similarly termed account which is a liability in favor of the patrons whose money is retained in the business. A detailed record of each patron's interest in these retained earnings should be kept, the total of which detail should agree with the reserve for patronage dividends total.

E. The dividend rate paid upon capital stock must not exceed the legal rate, or eight per cent, whichever is greater.

F. Substantially all of the common capital stock or voting capital stock must be held by producers. The term "producer" used in Minn. Stat. § 290.05 refers to "any person who operates a farm whether as owner, lessor or lessee and receives all or part of the crop which may be marketed directly or indirectly through a cooperative."

G. Such a cooperative may not market the products of nonmembers in excess of the products of members.

H. Such a cooperative may not purchase supplies and equipment for nonmembers in excess of supplies and equipment purchased for members.

I. Such a cooperative may not purchase supplies and equipment for persons who are neither members nor producers in excess of fifteen percent of the total value of all its purchases of supplies and equipment.

J. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt if as to each of its functions it meets the requirements of the Act. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under Minn. Stat. § 290.05. Business done for the State of Minnesota or its political subdivisions, or cities, boroughs, villages or school districts of the State, is not to be disregarded in determining the right to exemption under Minn. Stat. § 290.05. An association to be entitled to exemption must not only be organized but actually operated in the manner and for the purposes specified in Minn. Stat. § 290.05.

INCT 303 Organizations not exempt. The following are subject to Minnesota income tax or excise tax as stated below:

Cooperative associations supplying electrical heat, light or power to rural consumers are subject to income tax computed on that portion of their net income which gross receipts from consumers within the corporate limits of any city, village, or borough, bears to total gross receipts.

Corporations, individuals, estates and trusts mining or producing iron ore and other ores subject to the occupation tax imposed by Minn. Stat. § 298.01 and 298.011 are subject to tax on their income from any other business or property, and royalties are subject to income tax.

National and state banks are subject to the excise tax imposed by Minn. Stat. § 290.361.

Chapter Four: Income Taxes — Rates

INCT 400 Corporations. Corporations are subject to a tax at the rate of 12 percent of their taxable net income in excess of the credits allowed under Minn. Stat. § 290.21. A minimum tax of $100.00 is imposed on every corporation required to file a return. Minn. Stat. § 290.37 provides that a return is required if the corporation's Minnesota taxable net income is in excess

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of $500, or if its gross income from all sources exceeds $5,000.

INCT 401 Individuals, estates, and trust. Effective with taxable years beginning after December 31, 1971, the rate of tax on taxable net income in excess of the credits allowed under Minn. Stat. § 290.21 is as follows:

A. On the first $500, one and six-tenths percent;

B. On the second $500, two and two-tenths percent;

C. On the next $1,000, three and five-tenths percent;

D. On the next $1,000, five and eight-tenths percent;

E. On the next $1,000, seven and three-tenths percent;

F. On the next $1,000, eight and eight-tenths percent;

G. On the next $2,000, ten and two-tenths percent;

H. On the next $2,000, eleven and five-tenths percent;

I. On the next $3,500, twelve and eight-tenths percent;

J. On all over $12,500, and not over $20,000, fourteen percent;

K. On the remainder, fifteen percent.

Chapter Five: Nonrefundable Credits Against Tax

INCT 500 Personal and dependent credits.

A. Residents of Minnesota

1. $21.00 single credit — For tax years beginning after December 31, 1971 a $21.00 yearly credit is allowable to a single individual or to a married individual not living with spouse.

2. $42.00 married credit — For tax years beginning after December 31, 1971 a $42.00 yearly credit is allowable to married persons living with spouse. If both husband and wife have income, and separate or combined returns are filed, the credit may be taken by either, or divided between them in any proportion desired. If only one spouse had income and therefore only one return is filed, the entire credit may be taken on this return. The credit may be taken in full on a joint return.

3. $21.00 dependents credit — For tax years beginning after December 31, 1971 a $21.00 yearly credit is allowable to a taxpayer for each person dependent upon and receiving his chief support from the taxpayer. Dependents need not be related to the taxpayer nor need they be living with the taxpayer. The credit is allowed to only one taxpayer for any dependent. The term "dependent" does not include the spouse, or former spouse, of a taxpayer.

If a husband and wife are separated or divorced, the spouse who provides the chief support of a dependent may claim the credit. If the terms of a written separation agreement or decree of divorce or separate maintenance provide for payment of a specified sum for support of a dependent, such amounts shall be considered in determining whether the taxpayer making payment provides the chief support of the dependent. If the agreement or decree provides for payments to a spouse or former spouse but does not provide a specific sum for dependent's support, such amounts shall not be considered in determining whether the taxpayer making payment provides the chief support of the dependent.

4. $21.00 estate credit — For tax years beginning after December 31, 1971, a $21.00 yearly credit is allowable to the estate of a decedent.

5. $5.00 trust credit — For tax years beginning after December 31, 1971 a $5.00 yearly credit is allowable to a trust.

6. Change of status

The status of a taxpayer may change during a taxable year, for example, due to change in residence, marriage, birth of a dependent, etc. It may then become necessary to apportion the taxpayer's credits according to the number of months such status existed. For purposes of apportionment, more than one-half of a month is considered an entire month. The number of months in status is divided by twelve to obtain the percentage of credit allowable.

If a taxpayer becomes, or ceases to be, a Minnesota resident during the taxable year, all of such taxpayer's credits are apportioned according to the number of months of residence.

Credit for a dependent is allowable only for the number of months such dependency existed. Thus, if a child of the taxpayer is born during the taxable year, the dependency credit is apportioned accordingly.

If a taxpayer is single part of the taxable year, and married and living with spouse for the remaining part of the year, the single credit and married credit are apportioned accordingly. As previously noted, (clause 2.) the married credit can by agreement be taken by either spouse or divided between them as may be desired. Neither spouse may take the other's single credit except that if a joint return is filed, all credits are allowable.

A taxpayer's married status may change during a taxable year due to separation, divorce, or the death of a spouse. The married credit will be apportioned accordingly. This credit may be taken by either, or divided between them in any proportion desired.

In case of death of a spouse, a separate return must be filed by the estate executor or administrator unless the executor or administrator submits a joint return together with the surviving spouse or except where a joint return is filed in accordance with Minn. Stat. § 290.38 (See Minn. Stat. § 290.37, subd. 1(c).). (For date return is due, see INCT 1512.) The married credit shall be apportioned according to the number of months prior to the death of the taxpayer. An estate credit shall be allowed in proportion to the number of months after death to close of the taxable year. The entire proportionate married credit may by agreement be taken either by the surviving spouse or by the executor or administrator, or it may be divided between them in any proportion desired. The estate credit allowed shall in any event be a minimum of $5.00. In the event that the proportionate married credit is taken by the decedent, such credit shall be not less than $5.00.

7. $21.00 age 65 or over credit — For tax years beginning after December 31, 1971 an additional tax credit is allowable to those taxpayers who have attained the age of 65 at the close of the taxable year. An individual attains the age of 65 on the day preceding his 65th birthday. An individual whose birthday falls on January 1st in a given taxable year attains the age of 65 on the last day of the calendar year immediately preceding.

The $21.00 age 65 or over credit is not apportioned. Thus, the full $21.00 credit can be claimed no matter when the individual becomes 65 within a taxable year. In the case of married individuals living with spouse, the additional credit can be taken for each spouse who was 65 years of age or over at the close of the taxable year. If both husband and wife have income, and separate returns are filed, the additional credit or credits may be taken by either, or divided between them in any proportion desired. If only one spouse had income and therefore only one return is filed, the entire additional credit or credits may be taken on this return. The credit or credits may be taken in full on a joint return.

8. $21.00 blindness credit — unmarried individuals

$25.00 blindness credit — married individuals

For tax years beginning after December 31, 1974 an additional tax credit of $25.00 is allowed to unmarried taxpayers who are blind on the last day of the taxable year. In the case of married individuals living with spouse, the additional credit is $25.00 for each spouse who is blind at the close of the taxable year. The blindness credits are not apportioned in the case of Minnesota residents. Thus, full credit can be claimed no matter when the person became blind within a taxable year.

If both husband and wife have income, and separate returns are filed, the additional $25.00 blindness credit may be taken by either, or divided between them in any proportion desired. If only one spouse had income and therefore only one return is filed, the entire additional credit or credits may be taken in full on a joint return.

For tax years beginning after December 31, 1974 an additional credit of $25.00 is provided for deaf persons, including dependents.

B. Nonresidents of Minnesota

Nonresidents of Minnesota are allowed the same tax credits as Minnesota residents, provided that such credits shall be apportioned according to the ratio of gross income from sources in Minnesota to the gross income from all sources. In any event, a minimum credit of $5.00 shall be allowed.

C. Examples of computation of credits

Example No. 1. A married B on July 5 and they lived together during the rest of the year. Both A and B were Minnesota residents during the entire year. The credits allowable are as follows:

credit allowed A while Single (6/12 of $21.00) $10.50

credit allowed B while single (6/12 of $21.00) $10.50

credit allowed A & B while married and living together (6/12 of $42.00) $21.00

The single credits of A and B may be claimed on their respective separate or combined returns. If separate or combined returns are filed, the married credit can be taken by either of them or divided between the returns in any agreed proportion. All credits are allowable on a joint return of A and B.

Example No. 2. A and B were married and lived together the entire year. They became residents of Minnesota on July 1 and continued to reside in Minnesota the rest of the year. B became 65 on September 1. Credits are allowable as follows:

Married credit (6/12 x $42.00) $21.00

Additional age 65 or over credit $21.00

If separate returns are filed, the married credit and age 65 or over credit can be taken by either of them or divided between the returns in any agreed proportion. All credits are allowable on a joint return of A and B.

Example No. 3. A and B were married and lived

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together as residents of Minnesota until B died on July 6. A resided in Minnesota during the entire taxable year. B was 65 years of age on March 12. Credits are allowable as follows:

Married credit (6/12 x $42.00)	$21.00
A's single credit (6/12 x $21.00)	$10.50
B's age 65 or over credit	$21.00
Estate of B (6/12 x $21.00)	$10.50

Credits totaling $52.50 can be claimed on a joint return of A and of B's executor or administrator (the $10.50 credit to B's estate, for the six month period following his death, can only be claimed in the separate fiduciary return). If no executor or administrator is apointed, A may file a joint return for himself and for B for the period prior to his death and he may claim the total credits of $52.50. See, however, Regulation INCT 1503 concerning disaffirmance of a joint return by an executor or administrator, later appointed, by the filing of a separate return within one year after the due date of the return.

Separate returns can be filed for A and for B for the six month period prior to his death. A's single credit of $10.50 for the six month period after B's death can only be claimed on A's return, but the $21.50 married credit and B's 65 or over credit of $21.00 can be divided between A's return and B's return (for the period prior to his death) in whatever amounts are agreed to by A and B's executor or administrator.

If an income tax return is filed by B's estate for the period of six months after his death (See INCT 1500, Persons Required to Make Returns), the credit of $10.50 can be taken on this return. No other credits are allowable on this return.

Example No. 4. A and B were married and living together and Minnesota residents during the entire year. Their child was born on September 1. They have no other dependents. Credits are as follows:

Married credit	$42.00
Dependent credit (4/12 of $21.00)	$ 7.00

If separate or combined returns are filed the married credit can be taken by either A or B or divided between the returns in any agreed proportion. The dependent credit may be taken by the spouse who furnished over ½ the support of the dependent. All credits are allowable on a joint return.

Example No. 5. A and B were married and living together the entire taxable year. Both A and B are nonresidents. They are 67 years of age. A had $15,000 total income of which $6,000 was income taxable to Minnesota. B had no income taxable to Minnesota. The ratio of gross Minnesota income to total gross income is 6,000/15,000 or 2/5. Credits are as follows:

Married credit (2/5 x $42.00)	$16.80
Age 65 or over credit (2/5 x $42.00)	$16.80

A may claim credits in the amounts shown above in computing his Minnesota income tax. B need not file a separate Minnesota return and need not join in A's return.

INCT 501 Low income credit. Effective for taxable years beginning on or after January 1, 1975 the law provides a credit against tax equal to the tax liability (therefore no tax) in the following cases:

Unmarried claimant with income of $4400 or less

Claimant with one dependent with income of $5200 or less

Claimant with two dependents with income of $6000 or less

Claimant with three dependents with income of $6700 or less

Claimant with four dependents with income of $7300 or less

Claimant with five or more dependents with income of $7800 or less

"Income" for purposes of the credit is defined in Minn. Stat. § 290.012, subd. 4. In the case of married (not separated) persons, the income of both is included, only one may be a claimant and the other counts as a dependent. Any person receiving his chief support from any other individual may not be a claimant. Persons whose income exceeds the maximum figure stated above will be liable either for a tax computed in the ordinary manner on their Minnesota taxable income, or for a tax of 15 percent of the amount by which the income exceeds the maximum income figure set forth above, whichever is less.

INCT 502 Pollution control equipment.

A. In general — A credit against income taxes may be allowed in the amount of five percent of the net cost of pollution control equipment. The amount of claim is limited in any one year to the amount of the tax liability for that year, or $50,000, whichever is less. Any unused credit may be carried back three years and carried forward seven years. The total credit allowable in carryback or carryforward years may not exceed that year's tax liability, or $50,000, whichever is less.

Equipment must be purchased on or after January 1, 1969 if it is to prevent air or water pollution, or on or after January 1, 1971 if it is to prevent land pollution. There will be no credit for equipment purchased after December 31, 1976.

B. Determining the credit

1. The claimant submits completed Schedule PC, together with his income tax return, in which he may claim

a. five percent of the net cost of equipment

b. which is

(1) property used in a trade or business or

(2) property held for the production of income, under Minn. Stat. § 290.09, Subd. 7(A)(a),

c. which is installed and operated within Minnesota,

d. exclusively to prevent, control, or abate air, water, or land pollution.

e. in accordance with engineering principles approved by the Minnesota pollution control agency.

2. Credit is allowable in the first year for which a depreciation deduction is allowable under Minn. Stat. § 290.09, Subd. 7(A)(a).

3. The taxpayer shall furnish with his claim a statement from the Minnesota pollution control agency which establishes that the equipment qualifies under Minn. Stat. § 290.06, Subd. 9.

4. If equipment qualifies both as pollution control equipment under Minn. Stat. § 290.06, Subd. 9, and as feedlot pollution control equipment or device under Minn. Stat. § 290.06, Subd. 9a, the taxpayer may claim either credit, but not both on the same equipment.

INCT 503 Animal lot pollution control equipment.

A. In general — A credit against income taxes may be allowed in the amount of ten percent of the net cost of pollution control and abatement equipment and devices used in the operation of a livestock feedlot, poultry lot, or other animal lot. The amount of claim in any year is limited to the amount of the tax liability for that year, and there is no carryback or carryforward of the claimed amount.

Equipment or devices must be purchased on or after January 1, 1971, and there will be no credit for items purchased after December 31, 1976.

B. Determining the credit.

The claimant submits completed Schedule PC, together with his income tax return, in which he may claim

1. Ten percent of the net cost of the equipment or devices,

2. which is installed and operated within Minnesota,

3. to prevent, control, or abate pollution of air, land, or water

4. in connection with the operation of a livestock feedlot, poultry lot, or other animal lot.

5. "Equipment or devices" includes, but is not limited to, lagoons, aerating equipment, concrete storage pits, and slurry handling equipment.

6. The taxpayer must submit a statement from the pollution control agency which establishes that the agency approves the equipment or device as one qualified under the provisions of Minn. Stat. § 290.06, Subd. 9a.

7. If equipment qualifies both as pollution control equipment under Minn. Stat. § 290.06, Subd. 9, and as animal lot pollution control equipment or device under Minn. Stat. § 299.06, Subd. 9a, the taxpayer may claim either credit, but not both.

INCT 504 Political contributions credit. In lieu of the credit against taxable net income under Minn. Stat. § 290.21, Subd. 3(c), the taxpayer may claim a credit against tax of 50 percent of his contributions to political parties and candidates. The maximum credit is $12.50 ($25 on a joint return), however the credit for contributions to a political party is limited to $5 ($10 on a joint return).

INCT 505 Taxes paid to other states.

A. Wisconsin and North Dakota — Reciprocity

Under an agreement with Wisconsin effective January 1, 1968, Wisconsin does not tax the income from personal services performed by a Minnesota resident within the state of Wisconsin. Similarly, Minnesota does not tax the income from personal services performed by a Wisconsin resident within the state of Minnesota provided the person customarily returns to his Wisconsin place of abode at least once a month.

A similar agreement has been entered into with North Dakota effective January 1, 1969. North Dakota also requires that the Minnesota resident shall customarily return to his Minnesota place of abode at least once a month.

The resident of Wisconsin or North Dakota who claims he is not subject to taxation, under the reciprocity agreement, should file form MW-6, residence affidavit, with his employer so that the employer will not withhold Minnesota income tax. Such person claiming exemption under the reciprocity agreement, whether or not he files the form MW-6 with his employer, must submit form 115 (Claim for Exemption) to the Department of Revenue on or before the date his tax return would ordinarily be due. If Minnesota tax has been withheld, the individual must file form M-1 (Minnesota income tax return), together with form 115, in order to obtain a refund.

B. Taxes paid other states — credit

An individual who changed residence from one state to another and who is therefore subject to income tax, for different periods of time, by Minnesota and the other state, does not thereby qualify for any credit against Minnesota taxes for taxes paid to the other state.

1. Minnesota residents

The credit for taxes paid to another state is available to the individual who, while he is a Minnesota resident, performs services within some other state, where his income from such services is subject to an income tax by that state. The credit is allowed only if the other state does not allow the Minnesota resident a credit against taxes due such other state for the taxes paid to Minnesota on this same income.

To determine the amount of credit:

a. Compute the Minnesota income tax liability after application of any personal and dependent credits under Minn. Stat. § 290.06,

b. multiply the amount of this liability by a fraction obtained by dividing the amount of gross income from personal services performed in the other state by the entire amount of Minnesota gross income,

c. The credit allowed cannot exceed the amount of the tax liability to such other state on this income, which tax was in fact paid by the taxpayer, and

d. allowance of the credit shall not reduce the Minnesota tax to an amount lower that what would have been payable if such gross income had been excluded from computation of the Minnesota tax.

2. Nonresidents. The credit for taxes paid to another state is available to an individual who, while he is a resident of another state, performs services within Minnesota, where his income from such services is subject to an income tax by his state of residence. The credit is allowed only to residents of those states which grant a substantially similar credit to Minnesota residents who receive income from personal services performed within such states.

To determine the amount of credit:

a. Compute the individual's income tax liability to his state of residence,

b. Multiply the amount of this liability by a fraction obtained by dividing the amount of gross income from services performed within Minnesota by the entire amount of gross income subject to tax in the state of residence,

c. The credit allowed cannot exceed the amount of tax payable to the state of Minnesota on this same income.

C. Taxes paid Minnesota credit by other states. Certain states grant the Minnesota resident who gains income from the performance of personal services within their state a tax credit in respect to taxes payable to Minnesota on such income. (See B.2. above.) Minnesota grants a similar credit to residents of those states who have income from personal services performed within Minnesota. The Minnesota resident who is allowed credit by these states for taxes paid to Minnesota is not allowed any additional credit against Minnesota tax for taxes paid to such other state.

INCT 506 Credit for occupation tax. Minn. Stat. § 290.082 provides for a credit against tax in "The amount of occupation tax paid or accrued during the taxable year by any taxpayer in respect of mining or producing of copper-nickel ores in this state . . ." The statute also provides for a three year carryforward of any unused credits.

Chapter Six: Refundable Credits Against Tax

INCT 600 Senior citizen's and disabled person's tax credit. A refundable tax credit for a portion of property taxes accrued on a homestead, or for rent constituting property taxes accrued on a homestead, is allowed to persons age 65 or over, or certain disabled persons. Homestead means the dwelling owned or rented by the claimant as a home. A mobile home may be a homestead.

The tax credit is available to persons who attained the age of 65 during the calendar year for which the claim is filed, and to persons who were eligible to receive "supplementary security income for the aged, blind and disabled" provided under the social security amendments of 1972 (P. L. 92-603); or who were eligible to receive social security aid to the disabled under USCA Title 42, Section 416, Paragraph (i)(1) or Section 423(d); or who have received aid to disabled persons or aid to blind persons under Minn. Stat. ch. 256 during the year 1973. The claimant must have resided in Minnesota during the entire year for which the claim is made. A claimant may request either the credit allowed by Minn. Stat. § 290.0618 or the rent credit allowed by Minn. Stat. § 290.983, but he may not claim both credits.

Claim is made by submitting completed Form M-1SC by June 30 of the year following the year for which claim is made. The Commissioner of Revenue may extend the time for filing claim in case of sickness, absence, or other disability or when, in his judgment good cause exists. A claim made within two years after June 30 or after the extended due date will be allowed, however, the amount payable will be reduced by five percent for each month (or fraction thereof) of delinquency not exceeding 25 percent in all. A claim filed more than two years after the due date cannot be allowed.

The amount of the tax credit increases as the property taxes or rent increases up to a maximum and for the same property tax or rent figure decreases as the claimant's household income increases. The credit allowable cannot exceed the actual property tax paid.

Property taxes accrued means the real property tax, as shown on the county auditor's list furnished to the county treasurer on the first Monday in January of the year following the year for which claim is made, on property owned and occupied on that date as a homestead by the claimant. In determining the amount of property taxes accrued, the claimant shall exclude the homestead property tax relief credit (or the taconite relief credit), special assessments, charges for service, and interest thereon.

If the property owned and occupied as a homestead by the claimant on the first Monday of January was not so owned and occupied by such claimant for the entire previous year, property taxes accrued shall mean the taxes multiplied by the percentage of twelve months that such property was owned and occupied as a homestead by the claimant.

Only that portion of the dwelling owned and occupied by the claimant as a homestead qualifies for the credit, thus if 25 percent of the dwelling is rented to another by the claimant, only 75 percent of the taxes will qualify as property taxes accrued. If the dwelling is part of a farm covered by a single tax statement, property taxes accrued includes the taxes on the building and the land surrounding up to 120 acres. No credit may be taken for taxes on the part of the land in excess of 120 acres. On nonfarm property the property taxes accrued are limited to one acre.

Rent constituting property taxes accrued means 20 percent of the rent paid for occupancy only of the homestead during the year for which claim is made. Payment for appliances, furnishings, and utilities provided by the landlord is not payment of rent for occupancy only. In the case of a claim for rent constituting property taxes accrued the claimant shall have rented property during any part of the calendar year for which the claim is filed.

For nursing homes the rent paid for occupancy only shall not exceed the lesser of:

A. The rent paid for occupancy only figure on Form CRP;

B. The actual amount paid by the senior citizen;

C. One-third of the total rental charge made by the nursing home; or

D. $2,400.

This determination has been made by the Commissioner from samples of similar gross rents paid solely for the right of occupancy.

Household income is income of the claimant and spouse and means gross income as defined in the Minnesota income tax law. In addition, it includes net income from out of state business or property, nontaxable interest from Minnesota or the federal government or their instrumentalities, workmen's compensation, loss of time insurance, social security benefits, cash public assistance or relief, pensions received from the United States or the State of Minnesota including veterans disability pensions and railroad retirement benefits, and also includes alimony and support money. (Money that is legally required to be paid.)

If more than one person, not related as husband and wife, qualify as a claimant for the same homestead, each may submit a claim based on the amount of taxes or rent which he paid. If a husband and wife each qualify as a claimant they shall determine between themselves as to which one of them shall be the claimant. If they cannot agree the Commissioner of Revenue shall decide which one qualifies as the claimant and his decision shall be final.

The right to file a claim is personal only to the claimant and shall not survive his death. If death occurs after a timely claim is made, payment shall be made to his spouse. If there is no spouse surviving, payment shall be made to the executor or administrator of the claimant's estate.

A taxpayer may claim both this senior citizen credit and the property tax credit allowable under Minn. Stat. § 290.066, however, only the ad valorem taxes that are in excess of the amount of the property tax credit claimed can be used to determine the amount of the senior citizen's credit that are allowable. (See example under INCT 601.)

INCT 601 Property tax credit.

A. General. Beginning January 1, 1974 a person

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who is 65 years of age or over, or who becomes 65 years of age, is entitled to a refundable "credit" in the amount of the difference between the "base tax" on homestead property owned by him and the "current tax" on such property. In the event of the death of a person who was 65 years of age or over at the time of death, the credit is allowable to the surviving spouse, if such spouse has not remarried.

B. Qualifying property. The property must be owned by the claimant as his homestead either solely in his name or solely in the name of himself and his spouse as joint tenants or tenants in common of a fee title, a life estate, or an estate for years, or in the name of two or more joint tenants or tenants in common each of whom would qualify for the credit if he were the sole owner. If the property is not a single family dwelling but is instead part of a multiple family dwelling or part of a multipurpose structure, the amount of credit shall be apportioned according to the proportion of the property that is used by the claimant as his homestead. The property includes one acre of land most contiguous to the homestead structure provided title to such land is held by the person who owns title to the structure. Property is considered homestead property if it is so classified on the list delivered by the County Auditor to the County Treasurer on the 1st Monday of January of the applicable year. This homestead classification is shown on the tax statement issued to the homeowner by the County Treasurer.

C. Base tax. In the case of persons who are 65 years of age or over or who reach age 65 prior to June 1, 1974 the "base tax" is the ad valorem tax which became legally due and payable as shown on the County Auditor's list on the 1st Monday of January 1973, provided that the property was owned by the claimant at that time and provided that it was then classified as homestead property.

If a claimant reaches age 65 prior to June 1, 1974, but he did not own the homestead property on the 1st Monday of January 1973, his "base tax" will be the ad valorem tax as of the 1st Monday of January of any year after 1973 if he was the owner of the homestead property at that time.

Beginning June 1, 1974 the "base tax" of a person who reaches age 65 from June 1 to December 31 of any year is the ad valorem tax as of the first Monday of January of the year in which he reaches age 65, assuming that he was the owner of the homestead property on that date.

The "base tax" of a person who reaches age 65 from January 1 to May 31 of any year is the ad valorem tax as of the first Monday of January of the year prior to the year in which he became age 65, assuming that he was the owner of the homestead property on that date.

The "base tax" of a person who reaches age 65 but who did not own homestead property on the applicable date, as set forth above, is the ad valorem tax as of the first Monday of January of any subsequent year on which date he was the owner of the homestead property.

D. Current tax. The "current tax" is the ad valorem tax on homestead property owned by the claimant on the 1st Monday of January of each successive year after a "base tax" year is established, reduced by the amount of credit granted under the provisions of the Minnesota Income-Adjusted Homestead Credit Act (Minn. Stat. ch. 290A).

E. Limitations:

The "base tax" and "current tax" amounts that are used to determine the credit allowable must relate to the same homestead property. Thus, if a person sells his previous homestead property and purchases a new homestead, it is necessary to establish a new "base tax" and "current tax" on the property purchased.

F. Date of filing claim. Any person whose "current tax" in a taxable year exceeds his "base tax" in a previous taxable year can file his claim in the year in which the "current tax" is due and payable. The claim is due on or before August 31 of the year the "current tax" is due and payable. Extensions of time may be granted as provided in Minn. Stat. § 290.0615. Claims may be submitted after the due date or extended due date, however the amount of credit allowable will be reduced by five percent for each month (or fraction thereof) of delinquency not exceeding 25 percent in all. A claim filed more than two years after the due date cannot be allowed.

G. Senior Citizen's Credit. A taxpayer may claim both this property tax credit and the senior citizen's credit allowable under Minn. Stat. § 290.0603, however only the ad valorem taxes that are in excess of the amount of property tax credit claimed can be used in determining the amount of the senior citizen's credit that is allowable.

Example:

Ad valorem tax "current year"	$550.00
Ad valorem tax "base year"	500.00
Property tax credit allowable	$ 50.00
Ad valorem tax available for Senior Citizen Credit	$500.00

H. Income limitations. In the case of claims based on "current taxes" payable in 1976 and subsequent years, 100% of the difference between the "current tax" and "base tax" is allowed if the person's income as defined in Minn. Stat. § 290A.03 is $10,000 or less, no freeze credit is allowed if the person's income is $20,000 or more, and for each $500 or portion thereof over $10,000 the freeze credit is reduced by five percent of the amount otherwise allowable.

INCT 602 Rent credit. A refundable tax credit is alowed of ten percent of the total amount paid as rent during the taxable year for occupancy of real property used as a household residence for taxable years commencing on or after January 1, 1973. The credit shall not exceed $120 in any taxable year. Since the property rented must be real property, the tax credit is not allowed for rental of a mobile home.

The claimant must have resided in Minnesota for the entire calendar year and must have rented for at least six months of the year. A claimant who qualifies for both the senior citizen's tax credit (Minn. Stat. § 290.0601) and the rent credit may request either credit for any year, but may not claim both credits (Minn. Stat. § 290.991).

Claim is made by submitting Schedule RC together with Form M-1, Individual Income Tax Return. The claim must be timely filed, i.e. on or before the original or extended due date. For calendar year taxpayers the due date would be April 15 unless an extension of time in which to file the return has been granted.

Claims filed after the original or extended due date may be allowed but the amount of credit will be reduced by five percent plus an additional five percent for each month of delinquency not exceeding a total reduction of 25 percent. No claim that is filed more than two years after the original or extended due date can be allowed.

The tax credit is for rent paid for occupancy only and does not include payments for appliances, furnishings, or utilities provided by the landlord. The claimant must not have received any public funds for the payment of rent during the period for which claim is made. The rental unit must be a unit on which real property taxes were accrued.

Only one person may be allowed the rent credit on any household residence for the same period of time. When two or more individuals of the same household qualify as a claimant, they shall determine between themselves as to which one will submit the claim, but the entire rent paid for the unit may be used. If they are unable to agree, the Commisioner of Revenue shall decide which person shall be allowed the credit and his decision is final.

The right to file the claim is personal only to the claimant and shall not survive his death. If death occurs after a timely claim is made, and payment is due the claimant, such payment shall be made to a member of his household. If there is no other household member, payment shall be made to the executor or administrator of the claimant's estate.

The allowance of credit for rent paid during calendar year 1975 and thereafter is as provided by the Minnesota Income-Adjusted Homestead Credit Act (Minn. Stat. ch. 290A).

Chapter Seven: Accounting Regulations

INCT 700 Annual accounting period.

A. In general. Net income and taxable net income shall be computed and a return shall be made upon the basis of the taxpayer's annual accounting period, which is a taxable year. The term "annual accounting period" means the annual period (calendar year or fiscal year) on the basis of which the taxpayer regularly computes his income in keeping his books.

The term "taxable year" means the period for which the taxes levied by the Act are imposed. It is a calendar year, fiscal year, or in cases where a return for a fractional part of a year is permitted or required, the period for which such return is made. (See Minn. Stat. § 290.01, Subd. 9).

The term "fiscal year" means an annual accounting period of twelve months ending on the last day of any month other than December. If, in a taxable year beginning after August 16, 1974, if a taxpayer has made the election provided by Minn. Stat. § 290.40(2), the term means the annual period (varying from 52 to 53 weeks) so elected. (See Minn. Stat. § 292.01, Subd. 10). A taxpayer who has not established a fiscal year must make his return on the basis of a calendar year. A fiscal year will be recognized only if it is established as the annual accounting period of the taxpayer and only if the books of the taxpayer are kept in accordance with such fiscal year.

If a taxpayer keeps no books and/or has no established annual account period, or has one other than a fiscal year, as defined, above, the net income and taxable net income shall be computed on the basis of the calendar year. Taxpayers shall employ the same accounting period on which they are required to report their net income under the Federal Income Tax Act, but their right to change their accounting period is limited as set forth in Minn. Stat. § 290.07, Subd. 1, and in paragraph C. below.

A new taxpayer in his first return may adopt any taxable year which meets the requirements of Minn. Stat. § 290.07, Subd. 1 and this regulation without obtaining prior approval. The first taxable year of a new taxpayer must be adopted on or before the time pre-

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scribed by law (not including extensions) for the filing of the return for such taxable year.

B. Partnerships and partners. — A newly-formed partnership may adopt a taxable year which is the same as the taxable year of all its principal partners (or is the same taxable year to which its principal partners who do not have such taxable year concurrently change) without securing prior approval from the Commissioner. If all its principal partners are not on the same taxable year, a newly-formed partnership may adopt a calendar year without securing prior approval from the Commissioner. If a newly-formed partnership wishes to adopt a taxable year that does not qualify under the preceding two sentences, the adoption of such year requires the prior approval of the Commissioner in accordance with Minn. Stat. § 290.31, Subd. 6(2). An existing partnership may change its taxable year without securing prior approval from the Commissioner, if all its principal partners have the same taxable year to which the partnership changes, or if all its principal partners who do not have such a taxable year concurrently change to such taxable year. In any case, an existing partnership may not change its taxable year unless it secures the prior approval of the Commissioner in accordance with paragraph C. of this regulation and Minn. Stat. § 290.31, Subd. 6(2).

A partner may change his taxable year only if he secures the prior approval of the Commissioner in accordance with paragraph C. of this regulation.

C. Change of accounting period. — A taxpayer may change his accounting period only with the consent of the Commissioner unless the change is otherwise authorized under these Regulations. However, any change must be to an accounting period which is the same as the accounting period on which the taxpayer is required to report his income under the Internal Revenue Code. A return must be filed with Minnesota for each period a return is required by the Internal Revenue Code.

The taxpayer may apply to the Commissioner of Revenue for permission to change his accounting period by

1. Completing and filing Form M124 if the period change is not automatic for Federal purposes, or

2. Completing and attaching Form M124 to his return if his accounting period is changed automatically for Federal Income Tax purposes.

If the taxpayer has been permitted by the Commissioner of Internal Revenue to change his accounting period, that fact must be stated in his application to the Minnesota Commissioner of Revenue. If application for such change has been made to the Commissioner of Internal Revenue but no action has been taken thereon, application to the Minnesota Commissioner of Revenue should not be made until consent has been granted by the Commissioner of Internal Revenue.

In the event a taxpayer changes his annual accounting period for federal income tax purposes, he is required to change his annual accounting period for Minnesota income tax purposes and is required to file a Minnesota return and compute his net income and taxable net income for the short period required to effect the change in annual accounting period. The short period is a "taxable year." In such case, he shall pay a tax for the period not included in either his former or newly adopted taxable year, computed under Minn. Stat. § 290.32. The taxpayer shall thereafter make his returns and compute his net income upon the basis of the new annual accounting period.

INCT 701 Accounting methods. For individuals, estates, and trusts, the determination of the accounting methods as elected under Section 446 of the Internal Revenue Code and used in determining Federal adjusted gross income would apply in the determination of Minnesota gross income under Minn. Stat. § 290.01, Subd. 20.

Except as specifically provided to the contrary, net income and taxable net income shall be computed in accordance with the method of accounting regularly employed in keeping the taxpayer's books. The term "method of accounting" includes not only the overall method of accounting of the taxpayer, but also the accounting treatment of any item. It is acknowledged that a combination of methods is specifically provided for the accounting treatment of special items (such as research and experimental expenditures, soil and water conservation expenditures, depreciation, net operating losses, etc.). Methods of accounting which are employed as standard for the kind of income producing activities in which the taxpayer is engaged, will ordinarily be regarded as clearly reflecting income. However, an accounting system which does not treat all items of gross income and all deductions with reasonable consistency, will not be regarded as clearly reflecting income. In such cases the computation shall be made in accordance with a method which, in the opinion of the Commissioner, clearly and fairly reflects net taxable income. All items of gross income shall be included in the gross income of the taxable year in which received by a taxpayer, unless another method of accounting will more clearly reflect taxable income.

A taxpayer who changes the method of accounting employed in keeping his books shall, before computing his net income and taxable net income upon such new method for purposes of Minnesota taxation, secure the consent of the Minnesota Commissioner of Revenue.

INCT 702 Change in accounting methods. For individuals, estates, and trusts, any approved changes in accounting method in determination of Federal adjusted gross income under Section 481 of the Internal Revenue

Code must also be reflected in similar change in accounting methods to reflect Minnesota gross income under Minn. Stat. § 290.01, Subd. 20.

The taxpayer must secure permission from the Commissioner to change his method of accounting or in reporting income and deductions. Such application must be filed within ninety days or such other period as prescribed by the Internal Revenue Service after the beginning of the taxable year to be covered by the return. A statement must be attached to the application setting forth in detail the variation in treatment of classes of items on the old and new basis. A change in the method of accounting or basis of reporting income and deductions means any change in the treatment of items of income and deductions such as change from cash receipts and disbursements basis to the accrual basis or vice versa; a change in the method of inventory valuations; or a change permitted by the Commissioner involving any other specialized method of accounting for income and deductions except bad debts, the treatment of which is set forth in INCT 907.

For adjustments which are required when a change is made in an accounting method, see Minn. Stat. § 290.07, Subd. 3.

INCT 703 Restoration of amounts received or accrued under claim of right.

A. In general.

1. If, during the taxable year, the taxpayer is entitled under other provisions of Minn. Stat. ch. 290 to a deduction of more than $3,000 because of the restoration to another of an item which was included in the taxpayer's gross income for a prior taxable year (or years) under a claim of right, the tax imposed by Minn. Stat. ch. 290 for the taxable year shall be the tax provided in B. of this regulation.

2. For the purpose of this regulation "income included under a claim of right" means an item included in gross income because it appeared from all the facts available in the year of inclusion that the taxpayer had an unrestricted right to such item, and "restoration to another" means a restoration resulting because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item (or portion thereof).

3. For purposes of determining whether the amount of a deduction described in Minn. Stat. § 290.07, Subd. 4 exceeds $3,000 for the taxable year, there shall be taken into account the aggregate of all such deductions with respect to each item of income (described in Minn. Stat. § 290.07, Subd. 4 of the same class).

B. Determination of tax.

1. Under the circumstances described in paragraph A. of this section, the tax imposed by Minn. Stat. ch. 290 for the taxable year shall be the lesser of —

a. The tax for the taxable year computed under Minn. Stat. § 290.07, Subd. 4, that is, with the deduction taken into account, or

b. The tax for the taxable year computed without taking such deduction into account, minus the decrease in tax (under Minn. Stat. ch. 290 for the prior taxable year (or years) which would result solely from the exclusion from gross income of all or that portion of the income included under a claim of right to which the deduction is attributable. For the purpose of this subdivision, the amount of the decrease in tax is not limited to the amount of the tax for the taxable year. See a. of this regulation where the decrease in tax for the prior taxable year or years) exceeds the tax for the taxable year.

2. If the taxpayer computes his tax for the taxable year under the provisions b. of 1. the amount of the restoration shall not be taken into account in computing taxable income or loss for the taxable year, including the computation of any net operating loss carryback or carryover or any capital loss carryover.

3. If the tax determined under 1.a. is the same as the tax determined under 1.b. the tax imposed for the taxable year under Minn. Stat. ch. 290 shall be the tax determined under 1.a., and this regulation shall not otherwise apply.

C. Application to deductions which are capital in nature. Minn. Stat. § 290.07, Subd. 4 and this regulation shall also apply to a deduction which is capital in nature otherwise allowable in the taxable year. If the deduction otherwise allowable is capital in nature, the determination of whether the taxpayer is entitled to the benefits of Minn. Stat. § 290.07, Subd. 4 and this regulation shall be made without regard to the net capital loss limitation imposed by Minn. Stat. § 290.16, Subd. 5. For example, if a taxpayer restores $4,000 in the taxable year and such amount is a long-term capital loss, the taxpayer will, nevertheless, be considered to have met the $3,000 deduction requirement for purposes of applying this regulation, although the full amount of the loss might not be allowable as a deduction for the taxable year. However, if the tax for the taxable year is computed with the deduction taken into

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account, the deduction allowable will be subject to the limitation on capital losses carryover and carryback deductions provided by law. For individuals, estates, and trusts, the Federal law will govern because of Minn. Stat. § 290.01, Subd. 20. For corporations, see Minn. Stat. § 290.16, Subd. 5 and 6.

D. Determination of decrease in tax for prior taxable years —

1. Prior taxable years. The prior taxable year (or years) referred to in B. is the year (or years) in which the item to which the deduction is attributable was included in gross income under a claim of right and, in addition, any other prior taxable year (or years) the tax for which will be affected by the exclusion from gross income in such prior taxable year (or years) of such income.

2. Amount of exclusion from gross income in prior taxable years.

a. The amount to be excluded from gross income for the prior taxable year (or years) in determining the decrease in tax under B.1.b. shall be the amount restored in the taxable year, but shall not exceed the amount included in gross income in the prior taxable year (or years) under the claim of right to which the deduction for the restoration is attributable, and shall be adjusted as provided in b. below.

b. If the amount included in gross income for the prior taxable year (or years) under the claim of right in question was reduced in such year (or years) by a deduction allowed under Minn. Stat. § 290.16, Subd. 4 then the amount determined under a. to be excluded from gross income for such year (or years) shall be reduced in the same proportion that the amount included in gross income under a claim of right was reduced.

c. The determination of the amount of the exclusion from gross income of the prior taxable year shall be made without regard to the capital loss limitation contained in Minn. Stat. § 290.16, Subd. 5 applicable in computing taxable income for the current taxable year. The amount of the exclusion from gross income in a prior taxable year (or years) shall not exceed the amount which would, but for the application of Minn. Stat. § 290.16, Subd. 5, be allowable as a deduction in the taxable year of restoration.

3. Determination of amount of deduction attributable to prior taxable years.

a. If the deduction otherwise allowable for the taxable year relates to income included in gross income under a claim of right in more than one prior taxable year and the amount attributable to each such prior taxable year cannot be readily identified, then the portion attributable to each such prior taxable year shall be that portion of the deduction otherwise allowable for the taxable year which the amount of the income included under the claim of right in question for the prior taxable year bears to the total of all such income included under the claim of right for all such prior taxable years.

b. The rule provided in a. may be illustrated as follows:

Example. Under a claim of right, A included in his gross income over a period of three taxable years an aggregate of $9,000 for services to a certain employer, in amounts as follows: $2,000 for taxable year 1969, $4,000 for taxable year 1970, and $3,000 for taxable year 1971. In 1972 it is established that A must restore $6,750 of these amounts to his employer, and that A is entitled to a deduction of this amount in the taxable year 1972. The amount of the deduction attributable to each of the prior taxable years cannot be identified. Accordingly, the amount of the deduction attributable to each prior taxable year is:

$$1969 - \$6,750 \times \frac{\$2,000}{\$9,000} = \$1,500$$

$$1970 - \$6,750 \times \frac{\$4,000}{\$9,000} = \$3,000$$

$$1971 - \$6,750 \times \frac{\$3,000}{\$9,000} = \$2,250$$

4. Computation of amount of decrease in tax.

a. In computing the amount of decrease in tax for a prior taxable year (or years) resulting from the exclusion from gross income of the income included under a claim of right, there must first be ascertained the amount of tax previously determined for the taxpayer for such prior taxable year (or years). The tax previously determined shall be the sum of the amounts shown by the taxpayer on his return or returns, plus any amounts which have been previously assessed (or collected without assessment) as deficiencies or which appropriately should be assessed or collected, reduced by the amount of any refunds or credits which have previously been made or which appropriately should be made. After the tax previously determined has been ascertained, a recomputation must then be made to determine the decrease in tax, if any, resulting from the exclusion from gross income of all or that portion of the income included under a claim of right to which the deduction otherwise allowable in the taxable year is attributable.

b. No item other than the exclusion of the income previously included under a claim of right shall be considered in computing the amount of decrease in tax if reconsideration of such other item is prevented by the operation of any provision of the income tax laws or any other rule of law. However, if the amounts of other items in the return are dependent upon the amount of adjusted gross income, taxable income, or net income (such as charitable contributions, foreign tax credit, deductions for depletion, and net operating loss), appropriate adjustment shall be made as part of the computation of the decrease in tax. For the purpose of determining the decrease in tax for the prior taxable year (or years) which would result from the exclusion from gross income of the item included under a claim of right, the exclusion of such item shall be given effect not only in the prior taxable year in which it was included in gross income but in all other prior taxable years affected by the inclusion of the item (for example, prior taxable years affected by a net operating loss carryback or carryover or capital loss carryover).

c. The rules provided in this subparagraph may be illustrated as follows:

Example (1). For the taxable year 1969, a corporation has taxable income of $35,000 on which it paid $3,965 for Minnesota income tax. Included in gross income for the year was $20,000 received under a claim of right as royalties. In 1972, the corporation is required to return $10,000 of the royalties. It otherwise has taxable income in 1972 of $5,000 so that without application of Minn. Stat. § 290.07, Subd. 4 it has a net operating loss of $5,000 in that year. Facts also come to light in 1972 which entitle the corporation to an additional bad debt deduction of $5,000 for 1969. When a computation is made under B.1.a., the corporation has no tax for the taxable year 1972. When a computation is made under B.1.b., the tax for 1972, without taking the restoration into account is, $600, based on a taxable income of $5,000. The decrease in tax for 1969 is computed as follows:

Tax shown on return for 1969		$ 3,965
Taxable income for 1969 upon which tax shown on return was based		35,000
Less: additional deduction (on account of which credit or refund could be made)		5,000
Total		$30,000
Tax on $30,000 (adjusted taxable income for 1969)		$ 3,399
Taxable income for 1969 as adjusted	$30,000	
Less exclusion of amount restored	$10,000	
Taxable income for 1969 by applying 1(b)(1)(ii)	$20,000	
Tax on $20,000		$ 2,266
Decrease in tax for 1969 by applying 1(b)(1)(ii)		$ 1,133
Tax for 1972 without taking restoration into account		$ 600
Amount by which decrease exceeds the tax for 1972 computed without taking restoration into account		$ 533

(The $533 is treated as having been paid on the last day prescribed by law for the payment of the tax for 1972 and is available as a refund. In addition the taxpayer has made an overpayment of $566 ($3,965 less $3,399) for 1969 because of the additional bad debt deduction of $5,000.)

Example (2). Assume the same facts as in example (1) except that, instead of the corporation being entitled to an additional deduction of $5,000 for 1969, it is determined that the corporation failed to include an item of $5,000 in gross income for that year. The decrease in tax for 1969 is computed as follows:

Tax shown on return for 1969		$ 3,965
Taxable income for 1969 upon which tax shown on return was based		$35,000
Plus additional income on account of which deficiency assessment would be made)		$ 5,000
Total		$40,000
Tax on $40,000 (adjusted taxable income for 1969)		4,532
Taxable income for 1969 as adjusted	$40,000	
Less exclusion of amount restored	$10,000	
Taxable income for 1969 by applying 1(b)(1)(ii)	$30,000	
Tax on $30,000		$ 3,399
Decrease in tax for 1969 by applying 1(b)(1)(ii)		$ 1,133

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Tax for 1972 without taking restoration into account	$	600
Amount by which decrease exceeds the tax for 1972 computed without taking the restoration into account	$	533

(The $533 is treated as having been paid on the last day prescribed by law for the payment of the tax for 1972 and is available as a refund. In addition the taxpayer has a deficiency of $567 ($4,532 less $3.965) for 1969 because of the additional income of $5,000.)

E. Method of accounting. The provisions of Minn. Stat. § 290.07, Subd. 4 and this regulation shall be applicable in the case of a taxpayer on the cash receipts and disbursements method of accounting only to the taxable year in which the item of income included in a prior year (or years) under a claim of right is actually repaid. However, in the case of a taxpayer on the cash receipts and disbursements method of accounting who constructively received an item of income under a claim of right and included such item of income in gross income in a prior year (or years), the provisions of Minn. Stat. § 290.07, Subd. 4 and this regulation shall be applicable to the taxable year in which the taxpayer is required to relinquish his right to receive such item of income. Such provisions shall be applicable in the case of other taxpayers only to the taxable year which is the proper taxable year (under the method of accounting used by the taxpayer in computing taxable income) for taking into account the deduction resulting from the restoration of the item of income included in a prior year (or years) under a claim of right. For example, if the taxpayer is on an accrual method of accounting, the provisions of this section shall apply to the year in which the obligation properly accrues for the repayment of the item included under a claim of right.

F. Inventory items, stock in trade, and property held primarily for sale in the ordinary course of trade or business.

1. Except for amounts specified in subparagraph 2. of this paragraph the provisions of Minn. Stat. § 290.07, Subd. 4 and this regulation do not apply to deductions attributable to items which were included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. This regulation is, therefore, not applicable to sales returns and allowances and similar items.

2. The provisions of Minn. Stat. § 290.07, Subd. 4 and this regulation apply to deductions which arise out of refunds or repayments made by a regulated public utility, as defined in Section 7701(a)(33) (without regard to the limitation contained in the last two sentences thereof) of the Internal Revenue Code of 1954, if such refunds or repayments are required to be made by the government, political subdivision, agency or instrumentality referred to in such section, or by order of a court, or are made in settlement of litigation or under threat or imminence of litigation. Thus, deductions attributable to refunds of charges for the sale of natural gas under rates approved temporarily by a proper governmental authority are eligible for the benefits of Minn. Stat. § 290.07, Subd. 4 and this regulation, if such refunds are required by the governmental authority.

G. Bad debts. The provisions of Minn. Stat. § 290.07, Subd. 4 and this regulation do not apply to deductions attributable to bad debts.

H. Legal fees and other expenses. Minn. Stat. § 290.07, Subd. 4 and this regulation do not apply to legal fees or other expenses incurred by a taxpayer in contesting the restoration of an item previously included in income. This rule may be illustrated by the following example:

Example. A sold his personal residence to B in a prior taxable year and realized a capital gain on the sale. C claimed that under an agreement with A he was entitled to a five percent share of the purchase price since he brought the parties together and was instrumental in closing the sale. A rejected C's demand and included the entire amount of the capital gain in gross income for the year of sale. C instituted action and in the taxable year judgment is rendered against A who pays C the amount involved. In addition, A pays legal fees in the taxable year which were incurred in the defense of the action. Minn. Stat. § 290.07, Subd. 4 applies to the payment of the five-percent share of the purchase price to C. However, the payment of the legal fees, whether or not otherwise deductible, does not constitute an item restored for purposes of Minn. Stat. § 290.07, Subd. 4.

I. Refunds. If the decrease in tax for the prior taxable year (or years) determined under Minn. Stat. § 290.07, Subd. 4 and B.1.b. of this regulation exceeds the tax imposed by Minn. Stat. ch. 290 for the taxable year computed without the deduction, the excess shall be considered to be a payment of tax for the taxable year of the deduction. Such payment is deemed to have been made on the last day prescribed by law for the payment of tax for the taxable year and shall be refunded or credited in the same manner as if it were an overpayment of tax for such taxable year.

J. The treatment allowed under Minn. Stat. § 290.07, Subd. 4. is solely for the purpose of the computation of tax in the year of "restoration," any election made under Section 1341 of the Internal Revenue Code does not affect the determination of net income in either the restoration year or the year or years such claim of right had to be included in income. For the purpose of computation under this provision, individuals, estates, and trusts must utilize appropriate sections of the Internal Revenue Code in the determination and limitations of any of the classes of restored income. For example:

1. An election under Section 1341 of the Internal Revenue Code does not bind a taxpayer to a particular election under Minn. Stat. § 290.07, Subd. 4.

2. For individuals, estates, and trusts, the appropriate sections of the Internal Revenue Code dealing with limitations, carrybacks, carryforwards, and reporting of income and deductions must be applied for all years beginning after December 31, 1960.

INCT 704 Installment method of reporting income.

A. In General. Minn. Stat. § 290.07, Subd. 5 permits dealers in personal property, that is, persons who regularly sell or otherwise dispose of personal property on the installment plan, to return the income from the sale or other disposition thereof on the installment method. The installment method may also be applied with certain limitations (see paragraph C. of this section) to the sale or other disposition of real property and the casual sale or other casual disposition of certain personal property.

1. For individuals, estates, and trusts, the installment method of reporting income may be elected in determining federal adjusted gross income under Section 453 of the Internal Revenue Code and this determines the amount of Minnesota gross income under Minn. Stat. § 290.01, Subd. 20.

2. The election of the installment method of reporting income is for purposes of determining the accounting period such income shall be reported. It does not change the assignability of such income.

If an individual taxpayer as a resident of Minnesota has elected to report a sale of tangible property located in Minnesota on the installment method and subsequently establishes his permanent residence outside of Minnesota the portion of such installments representing gain on the sale of the Minnesota property is taxable by Minnesota whether it is received before or after the move. (See INCT 1201 A.) The portion of such installments that represents interest is taxable by Minnesota only during the period of Minnesota residence.

If an individual taxpayer as a nonresident of Minnesota has elected to report a sale of tangible property located outside of Minnesota on the installment method and subsequently establishes his permanent residence in Minnesota the portion of such installments representing gain on the sale of the out-of-state property is not taxable by Minnesota whether it is received before or after the move. The portion of such installments which represents interest is taxable by Minnesota during the period of Minnesota residence.

In the case of an installment sale of intangible property, the income is assignable to the state in which the recipient resides on the date the income is received. (See INCT 1201 B.)

B. Income to be reported. Persons permitted to use the installment method of according prescribed in Minn. Stat. § 290.07, Subd. 5 may return as income from installment sales in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when the property is paid for bears to the total contract price. In the case of dealers in personal property, for this purpose, gross profit means sales less cost of goods sold. See INCT 705 for rules applicable to the computation of income of dealers in personal property reporting on the installment method. In the case of sales of real estate and casual sales of personal property, gross profit means the selling price less the adjusted basis as defined in Minn. Stat. § 290.14 and 290.15 and the regulations thereunder. Gross profit, in the case of a sale of real estate by a person other than a dealer and a casual sale of personal property, is reduced by commissions and other selling expenses for purposes of determining the proportion of installment payments returnable as income. For rules applicable in determining "selling price" and the use of certain other terms, see also paragraph C. of INCT 707.

C. Limitations on the use of the installment method.

1. Income from the sale or other disposition of real property or from casual sales or other casual dispositions of personal property may be reported on the installment method, only if, in the taxable year of the sale or other disposition

a. there are no payments or

b. the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

2. The income from a casual sale or other casual disposition of personal property may be reported on the installment method only if

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a. the property is not of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, and

b. its sale price exceeds $1,000.

D. Treatment of gain or loss on default by the purchaser of personal property sold on the installment plan. If for any reason the purchaser defaults in any of his installment payments, and the vendor (whether he is a dealer in personal property or a person who has made a casual sale or other casual disposition of personal property), returning income on the installment method, repossesses the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the repossession occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the repossession or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of repossession of the property repossessed and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the repossession. (See also INCT 709.) The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the repossession of the property shall be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see Minn. Stat. § 290.07, Subd. 5(4). No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the repossession unless it is clearly shown that after the property was repossessed the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the repossession. (See also Minn. Stat. § 290.09, Subd. 6 and the regulations thereunder.) If the property repossessed is bid in by the vendor at a lawful public auction or judicial sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary. The fair market value of the property repossessed shall be reflected in the appropriate permanent records of the vendor at the time of such repossession.

E. Other accounting methods. If the vendor chooses as a matter of consistent practice to return the income from installment sales on an accrual method or on the cash receipts and disbursements method, such a course is permissible.

F. Records. In adopting the installment method of accounting the seller must maintain such records as are necessary to clearly reflect income.

INCT 705 Dealers in personal property.

A. In general. A person who regularly sells personal property on the installment plan may adopt (but is not required to do so), one of the following four ways of protecting his interest in case of default by the purchaser:

1. By an agreement that title is to remain in the vendor until the purchaser has completely performed his part of the transaction;

2. By a form of contract in which title is conveyed to the purchaser immediately, but subject to a lien for the unpaid portion of the selling price;

3. By a present transfer of title to the purchaser, who at the same time executes a reconveyance in the form of a chattel mortgage to the vendor; or

4. By conveyance to a trustee pending performance of the contract and subject to its provisions.

B. Installment income of dealers in personal property. The income from installment sales of a dealer, that is, a person regularly engaged in the sale of personal property on the installment plan, may be ascertained by treating as income that proportion of the total payments received in the taxable year from installment sales (such payments being allocated to the year against the sales of which they apply) which the gross profit realized or to be realized on the total installment sales made during each year bears to the total contract price of all such sales made during that respective year. A dealer who desires to compute income by the installment method shall maintain accounting records in such a manner as to enable an accurate computation to be made by such method.

C. Treatment of payments on sales made in years prior to change to installment method. No payments received in the taxable year shall be excluded in computing the amount of income to be returned on the ground that they were received under a sale the total profit from which was returned as income during a taxable year or years prior to the change by the taxpayer to the installment method of returning income. In this regard, however, see Minn. Stat. § 290.07, Subd. 5, (5), (6), and (7) and INCT 710 for the computation of the adjustments for amounts previously included in income in the case of a change from an accrual method to the installment method. Deductible items are not to be allocated to the years in which the profits from the sales of a particular year are to be returned as income, but must be deducted for the taxable year in which the items are "paid or incurred" or "paid or accrued." See Minn. Stat. § 290.07, Subd. 7.

INCT 706 Special rules applicable to casual sales or casual dispositions of personal property. **Income shall be computed and reported separately for each casual sale or other casual disposition of personal property as installment payments are received in the year of sale and subsequent years. See INCT 704 C. for limitations on the use of the installment method.**

INCT 707 Sale of real property involving deferred periodic payments.

A. In General. Sales of real property involving deferred payments include

1. agreements of purchase and sale which contemplate that a conveyance is not to be made at the outset, but only after all or a substantial portion of the selling price has been paid, and

2. sales in which there is an immediate transfer of title, the vendor being protected by a mortgage or other lien as to deferred payments.

B. Classes of sales. Such sales, under either paragraph A. 1. or 2. of this section, fall into two classes when considered with respect to the terms of sale, as follows:

1. Sales of real property which may be accounted for on the installment method, that is, sales of real property in which

a. there are no payments during the taxable year of the sale or

b. the payments in such taxable year (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price, or

2. Deferred-payment sales of real property in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made exceed 30 percent of the selling price.

C. Determination of "selling price." In the sale of mortgaged property the amount of the mortgage, whether the property is merely taken subject to the mortgage or whether the mortgage is assumed by the purchaser, shall, for the purpose of determining whether a sale is on the installment plan, be included as a part of the "selling price"; and for the purpose of determining the payments and the total contract price as those terms are used in Minn. Stat. § 290.07, Subd. 5 and INCT 704 through INCT 710, the amount of such mortgage shall be included only to the extent that it exceeds the basis of the property. The term "payments" does not include amounts received by the vendor in the year of sale from the disposition to a third person of notes given by the vendee as part of the purchase price which are due and payable in subsequent years. Commissions and other selling expenses paid or incurred by the vendor shall not reduce the amount of the payments, the total contract price, or the selling price.

INCT 708 Sale of real property treated on installment method.

A. In general. In any transaction described in paragraph B.1. of INCT 707, that is, sales of real property in which there are no payments during the year of sale or the payments in that year do not exceed 30 percent of the selling price, the vendor may return as income from each such transaction in any taxable year that proportion of the installment payments actually received in that year which the gross profit (as described in paragraph B. of INCT 704) realized or to be realized when the property is paid for bears to the total contract price. In any case, the sale of each lot or parcel of a subdivided tract must be treated as a separate transaction and gain or loss computed accordingly.

B. Defaults and repossessions. If the purchaser of real property on the installment plan defaults in any of his payments, and the vendor returning income on the installment method reacquires the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the reacquisition occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the reacquisition or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of reacquisition of the property reacquired (including the fair market value of any fixed improvement placed on the property by the purchaser) and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the reacquisition. The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the reacquisition of the property will be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see Minn. Stat. § 290.07, Subd. 5(4). No deduction for a bad debt shall in any case be taken on account of any portion of the obliga-

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tions of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the reacquisition of the property, unless it is clearly shown that after the property was reacquired the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the reacquisition. (See Minn. Stat. § 290.09, Subd. 6.) If the property reacquired is bid in by the vendor at a foreclosure sale, the fair market value of the absence of clear and convincing proof to the contrary. If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition (including the fair market value of any fixed improvements placed on the property by the purchaser).

INCT 709 Deferred-payment sale of real property not on installment method.

A. Value of obligations.

1. In transactions included in paragraph B.2. of INCT 707 that is, sales of real property involving deferred payments in which the payments received during the year of sale exceed 30 percent of the selling price, the obligations of the purchaser received by the vendor are to be considered as an amount realized to the extent of their fair market value in ascertaining the profit or loss from the transaction. Such obligations, however, are not considered in determining whether the payments during the year of sale exceed 30 percent of the selling price.

2. If the obligations received by the vendor have no fair market value, the payments in cash or other property having a fair market value shall be applied against and reduce the basis of the property sold and, if in excess of such basis, shall be taxable to the extent of the excess. Gain or loss is realized when the obligations are disposed of or satisfied, the amount thereof being the difference between the reduced basis as provided in the preceding sentence and the amount realized therefor. Only in rare and extraordinary cases does property have no fair market value.

B. Title retained by vendor.

1. If the vendor in sales referred to in paragraph A. of this section has retained title to the property and the purchaser defaults in any of his payments, and the vendor repossesses the property, the difference between

a. the entire amount of the payments actually received on the contract and retained by the vendor plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser and

b. the sum of the profits previously returned as income in connection therewith and an amount representing what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made, will constitute gain or loss, as the case may be, to the vendor for the year in which the property is repossessed.

2. The basis of the property described in subparagraph 1. of this paragraph, in the hands of the vendor will be the original basis at the time of the sale plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, reduced by what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made.

C. Title transferred to purchaser. If the vendor in sales described in paragraph A. of this section has previously transferred title to the purchaser, and the purchaser defaults in any of his payments, and the vendor accepts a voluntary reconveyance of the property, in partial or full satisfaction of the unpaid portion of the purchase price, the receipt of the property so reacquired, to the extent of its fair market value at that time including the fair market value of fixed improvements placed on the property by the purchaser, shall be considered as the receipt of payment on the obligations satisfied. If the fair market value of the property is greater than the basis of the obligations of the purchaser so satisfied (generally, such basis being the fair market value of such obligations previously recognized in computing income), the excess constitutes ordinary income. If the value of such property is less than the basis of such obligations, the difference may be deducted as a bad debt if uncollectible, except that if the obligations satisfied are securities (as defined in Section 165(g)(2)(C) of the Internal Revenue Code of 1954), any gain or loss resulting from the transaction is a capital gain or loss, subject to the provisions of Minn. Stat. § 290.16. If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of the fixed improvements placed on the property by the purchaser. See Minn. Stat. § 290.09, Subd. 6 with respect to property reacquired in a foreclosure proceeding.

INCT 710 Change from accrual to installment method by dealers.

A. In General. A taxpayer who is a dealer in personal property and who is entitled to the benefits of Minn. Stat. § 290.07, Subd. 5(1) may elect to report his taxable income on the installment method of accounting without securing consent of the Commissioner. In the event a dealer elects to change from an accrual method of accounting to the installment method, any installment payments actually received in the year of change or in subsequent taxable years on account of sales or other dispositions of property made in any taxable year before the year of change shall not be excluded from taxable income. This means that profits attributable to installment sales even though included in taxable income in their entirety in a year of sale before the year in which the change to the installment method is made are also includible in taxable income as payments are received in the year of change and in subsequent taxable years. But the tax imposed for the year of change or any subsequent taxable years (such years being referred to as "adjustment years") beginning after December 31, 1954, shall be reduced by an adjustment proportionate to the tax attributable to the gross profit which is, by reason of the change to the installment method, included in gross income a second time, determined by the method of computation described in Minn. Stat. § 290.07, Subd. 5, (5), (6) and (7).

B. Adjustment to tax.

1. The adjustment to tax under Minn. Stat. § 290.07, Subd. 5(6) is determined as follows:

a. Determine separately the portion of the tax for each taxable year before the year of change which is attributable to the gross profit from installment sales which was included in gross income in that year and which is also includible in gross income for any adjustment year;

b. Determine separately the portion of the tax for each adjustment year which is attributable to the gross profit described in subdivision a. of this subparagraph:

c. Select for each adjustment year the lesser of the amounts determined under subdivisions a. and b. of this subparagraph;

d. The tax imposed in any adjustment year shall be reduced by the amount as determined in subdivision c. of this subparagraph or the sum of all such amounts if more than one prior taxable year is involved;

e. The portion of the tax for any taxable year attributable to the gross profit described in subdivision a. of this subparagraph shall be that proportion of the tax determined for such year without regard to the adjustments under this paragraph, which the gross profit included in gross income in the prior year and includible in gross income for the adjustment year bears to the gross income of that year.

2. The tax detemined in any of the steps provided in subparagraph 1. of this paragraph shall be the tax imposed by Minn. Stat. ch. 290.

C. Special rules for partnerships. In the case of a change from an accrual method of accounting to the installment method of accounting by a partnership which is a dealer in personal property, payments attributable to installment sales under such accrual method shall be included in the gross income of the partnership in their entirety as payments are received in the year of change and in subsequent taxable years, even though included in gross income of the partnership for a year before the year in which the change to the installment method is made. Each partner's distributive share of the profits attributable to installment sales included in partnership taxable income for the year of sale and for each "adjustment year" shall be taken into account separately in accordance with Minn. Stat. § 290.31, Subd. 2(1)(f) and INCT 2216 A 5. The income tax of each partner for adjustment years shall be computed with the adjustment provided by Minn. Stat. § 290.07, Subd. 5(6) for amounts previously taxed. However, it is not necessary for a partner to have been a member of the partnership for the year of sale and each subsequent taxable year, including adjustment years, in order to apply the adjustment to tax provided by Minn. Stat. § 290.07, Subd. 5(6).

INCT 711 Requirements for adoption of or change to installment method.

A. Dealers in personal property.

1. Adoption of installment method. A taxpayer who adopts the installment method of accounting in the first taxable year in which he makes installment sales must indicate in his income tax return for that taxable year that the installment method of accounting is being adopted.

2. Change to installment method. A taxpayer who changes to the installment method in accordance with INC 710 shall attach a statement to his income tax return for the taxable year with respect to which the change is made. This statement must show —

a. The method of accounting used in computing taxable income before the change;

b. The span of taxable years over which it will be necessary to compute adjustments; and

c. A schedule showing the computation of the required adjustments under Minn. Stat. § 290.07, Subd. 5(6).

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Similar statements must be attached to and filed with income tax returns for subsequent taxable years in which adjustments are required because of the inclusion of installment payments in gross income a second time.

B. Sales of real property and casual sales of personal property.

1. A taxpayer who sells or otherwise disposes of real property, or who makes a casual sale or other casual disposition of personal property, and who elects to report the income therefrom on the installment method must set forth in his income tax return (or in a statement attached thereto) for the year of the sale or other disposition the computation of the gross profit on the sale or other disposition under the installment method. In any taxable year in which the taxpayer receives payments attributable to such sale or other disposition, he must also show in his income tax return the computation of the amount of income which is being reported in that year on such sale or other disposition.

2. The information required by subparagraph 1. of this paragraph must be submitted for each separate sale or other disposition but, in the case of multiple sales or other dispositions, separate computations may be shown in a single statement.

C. Installment method and other accounting methods. Notwithstanding the fact that a dealer in personal property may change to the installment method of accounting without permission, a dealer may not change from the installment method of accounting for sales on the installment plan to an accrual method of accounting or to any other method of accounting without the permission of the Commissioner.

INCT 712 General rule for taxable year of inclusion. Section 451 of the Internal Revenue Code of 1954 as amended controls for individuals, estates, and trusts in determining the taxable year in which income is included. The following applies only to corporations.

Gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer unless includible for a different year in accordance with the taxpayer's method of accounting. Under an accrual method of accounting, income is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. Therefore, under such a method of accounting if, in the case of compensation for services, no determination can be made as to the right to such compensation or the amount thereof until the services are completed, the amount of compensation is ordinarily income for the taxable year in which the determination can be made. Under the cash receipts and disbursements method of accounting, such an amount is includible in gross income when actually or constructively received. Where an amount of income is properly accrued on the basis of a reasonable estimate and the exact amount is subsequently determined, the difference, if any, shall be taken into account for the taxable year in which such determination is made. To the extent that income is attributable to the recovery of bad debts for accounts charged off in prior years, it is includible in the year of recovery in accordance with the taxpayer's method of accounting, regardless of the date when the amounts were charged off. For treatment of bad debts and bad debt recoveries, see Minn. Stat. § 290.09, Subd. 6. For the year in which a partner must include his distributive share of partnership income, see Minn. Stat. § 290.31, Subd. 6(1). If a taxpayer ascertains that an item should have been included in gross income in a prior taxable year, he should, if within the period of limitation, file an amended return and pay any additional tax due. Similarly, if a taxpayer ascertains that an item was improperly included in gross income in a prior taxable year, he should, if within the period of limitation, file claim for credit or refund of any overpayment of tax arising therefrom.

INCT 713 Constructive receipt of income.

A. General rule. Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account or set apart for him so that he may draw upon it at any time. However, income is not constructively received if the taxpayer's control of its receipts is subject to substantial limitations or restrictions. Thus, if a corporation credits its employees with bonus stock, but the stock is not available to such employees until some future date, the mere crediting on the books of the corporation does not constitute receipt.

B. Examples of constructive receipt. Interest coupons which have matured and are payable but which have not been cashed are constructively received in the taxable year during which the coupons mature, unless it can be shown that there are no funds available for payment of the interest during such year. Dividends on corporate stock are constructively received when unqualifiedly made subject to the demand of the shareholder. However, if a dividend is declared payable on December 31 and the corporation followed its usual practice of paying the dividends by checks mailed so that the shareholders would not receive them until January of the following year, such dividends are not considered to have been constructively received until January. Interest on savings bank deposits is income to the depositor when credited on the books of the bank, even though the bank has a rule, seldom or never enforced, that it may require a certain number of days' notice before withdrawals are permitted. Generally, the amount of dividends or interest credited to shareholders of organizations such as building and loan associations or cooperative banks, is income to the shareholders for the taxable year when credited. However, if the amount of such dividends or interest is not available for the shareholders' free and unrestricted use at the time credited, such amount is not constructively received and does not constitute income to the shareholder until the taxable year in which the amount is available. Accordingly, if the amount of dividends or interest is accumulated and is not available to the shareholder until the maturity of a share, the crediting thereof to the shareholder's account does not constitute constructive receipt. However, in such a case the total amount credited is income to the shareholder in the year of maturity.

INCT 714 Long-term contracts.

A. Definition. The term "long-term contracts" means building, installation, or construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted.

B. Methods. Income from long-term contracts (as defined in paragraph A. of this section), determined in a manner consistent with the nature and terms of the contract, may be included in gross income in accordance with one of the following methods, provided such method clearly reflects income:

1. Percentage of completion method. Gross income derived from long-term contracts may be reported according to the percentage of completion method. Under this method, the portion of the gross contract price which corresponds to the percentage of the entire contract which has been completed during the taxable year shall be included in gross income for such taxable year. There shall then be deducted all expenditures made during the taxable year in connection with the contract, account being taken of the material and supplies on hand at the beginning and end of the taxable year for use in such contract. Certificates of architects or engineers showing the percentage of completion of each contract during the taxable year shall be available at the principal place of business of the taxpayer for inspection in connection with an examination of the income tax return.

2. Completed Contract Method. Gross income derived from long-term contracts may be reported for the taxable year in which the contract is finally completed and accepted. Under this method, there shall be deducted from gross income for such year all expenses which are properly allocable to the contract, taking into account any material and supplies charged to the contract but remaining on hand at the time of completion.

C. In General. Long-term contract methods of accounting apply only to the accounting for income and expenses attributable to long-term contracts. Other income and expense items, such as investment income or expenses not attributable to such contracts, shall be accounted for under a proper method of accounting. (See Minn. Stat. § 290.07, Subd. 2.) A taxpayer may change to or from a long-term contract method of accounting only with the consent of the Commissioner. (See Minn. Stat. § 290.07, Subd. 2.) A taxpayer may elect the long-term contract method for the first taxable year in which he enters into a long-term contract. A statement to that effect shall be attached to his income tax return.

INCT 715 Accounting for redemption of trading stamps and coupons.

A. If a taxpayer issues trading stamps or premium coupons with sales, which stamps or coupons are redeemable in merchandise or cash, he should, in computing the income from such sales, subtract only the amount which will be required for the redemption of such part of the total issue of trading stamps or premium coupons issued during the taxable year as will eventually be presented for redemption. This amount will be determined in the light of the experience of the taxpayer in his particular business and of other user of trading stamps or premium coupons engaged in similar businesses. The taxpayer shall file a statement showing with respect to each of the five preceding years, or such number of these years as stamps or coupons have been issued by him, the following:

1. The total issue of stamps or coupons during each year:

2. The total stamps or coupons redeemed in each year: and

3. Such other information as is necessary to establish the correctness of the amount subtracted from sales in each of such years.

B. Upon examination of the return, the amount subtracted in respect of such coupons will be adjusted if, in the opinion of the Commissioner, such amount is incorrectly computed.

INCT 716 Time for taking deductions and credits.

A. In general. — For individuals, estates, or trusts,

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those deductions that would be reflected in Minnesota gross income as defined under Minn. Stat. § 290.01, Subd. 20 would be governed generally by Section 461 of the Internal Revenue Code unless specific exceptions and allowances have been made elsewhere under Minn. Stat. ch. 290. Taxpayers should endeavor to ascertain all the facts necessary to make a correct return for each year. The return should be complete in itself, both as to gross income and deductions. The expenses of one year cannot be used to reduce the income of a subsequent year. If a taxpayer does not avail himself of the deductions authorized by the Act for the year in which such deductions should be taken, he cannot charge them against the income of any other year.

Adjudications which are binding upon the taxpayer, such as decisions under workmen's compensation laws, or judgements on account of damages for patent infringement, personal injuries, or other causes, are deductible from gross income when the claim is adjudicated if the taxpayer is reporting on an accrual basis, or when the claim is paid if the taxpayer is on the cash basis. In determining the extent of such deductions the amount shall be reduced by insurance or other compensation received.

If a taxpayer cannot ascertain the amount of a loss in the year in which it was sustained, but subsequently determines the amount of such loss, he may file a claim for refund under the provisions of Minn. Stat. § 290.50 for the year during which the loss actually occurred, if the statute of limitations set out in Minn. Stat. § 290.50 has not expired. However, losses arising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. (See Minn. Stat. § 290.09, Subd. 5.)

For tax treatment of periodic payments of alimony, separate maintenance, or support by a divorced or separated spouse, see Minn. Stat. § 280.072 and 290.09, Subd. 14.

Deductions and credits accrued only by reason of the death of the taxpayer shall not be allowed in computing the net income of the taxpayer for the period in which falls the date of the taxpayer's death. See INCT 719.

B. "Paid or incurred" and "paid or accrued." — The terms "paid or incurred" and "paid or accrued" will be construed according to the method of accounting upon the basis of which the net income is computed by the taxpayer. The deductions and credits provided for in Minn. Stat. § 290.09 and 290.21 must be taken for the taxable year in which "paid or accrued" or "paid or incurred," unless in order clearly to reflect the income such deductions or credits should be taken as of a different period.

Interest received on refunds of taxes shall be included in gross income for the year received regardless of the method of bookkeeping employed by the taxpayer.

C. Contested Liabilities. With respect to taxable years beginning after December 31, 1964, if the taxpayer contests an ascertained liability but nevertheless causes the payment of said liability and such liability, except for the contest, would be a proper deduction, then said payment shall be deductible for the year of such payment or for an earlier taxable year.

INCT 717 Treatment of income from obligations of United States issued at a discount. The earned increment arising from obligations of the United States isued at a discount and redeemable for fixed amounts increasing at stated intervals constitutes interest received from United States government obligations and is excluded from gross income of all taxpayers other than corporations, if federal law exempts such interest from state taxation. (See Minn. Stat. § 290.08, Subd. 8.) Such earned increment will not be taxed as a capital gain when the obligation is disposed of, redeemed, or paid at maturity but will constitute taxable interest received to all corporations in accordance with the provisions of Minn. Stat. § 290.08, Subd. 13.

A corporate taxpayer, even though it employs the cash basis as the method of computing its net income, may, at its election, treat the increase in redemption price occurring during the taxable year as income for such taxable year or at its election treat such increase as income in the year in which the obligations are disposed of, redeemed, or paid at maturity. Once such election is made no change in accounting therefor is permitted, unless application is made to the Commissioner and his permission is granted to change to a different method of reporting income from such obligations.

INCT 718 Recovery of bad debts. The Internal Revenue Code of 1954, as amended, governs for individuals, estates, and trusts as to the extent to which there is an inclusion in gross income in the case of a recovery of bad debts. The following applies only to corporations.

The recovery of all or part of a bad debt constitutes income only to the extent that a tax benefit resulted in a prior year.

To illustrate, assume that in 1970 a corporate taxpayer's taxable net income was $0 after deducting a $1,200 bad debt. Since the taxpayer was entitled to a specific credit of $500 in 1970, it was apparent that there was no tax benefit from $500 of the total bad debt deduction of $1,200. If the taxpayer recovers $250 in 1973 and $500 in 1974, such taxpayer may exclude the total $250 recovery in 1973 and $250 of the $500.00 recovery in 1974. The balance of the 1974

recovery and any subsequent recovery must be included in gross income.

If the taxpayer uses the reserve method, recoveries of bad debts previously charged against the reserve are not income as such but are credits to the reserve, thus decreasing the amount of addition to the reserve for the current year necessary to bring it up to a reasonable amount. It is this addition to the reserve which is deductible on the income tax return.

INCT 719 Alimony and separate maintenance payments; income to wife or former wife. The inclusion of alimony and separate maintenance payments in Minnesota gross income is governed by Section 71 of the Internal Revenue Code, under Minn. Stat. § 290.01, Subd. 20.

INCT 720 Commodity credits loans. In the case of individuals, estates, or trusts, the election made for treatment of commodity credit loans under Section 77 of the Internal Revenue Code will govern in the computation of Minnesota gross income under Minn. Stat. § 290.01, Subd. 20. The following regulation is for corporations:

Prior to the 1943 Amendment, when a producer of agricultural commodities pledged them as security for a loan from the Commodity Credit Corporation, he was required to include the amount of these loans in his gross income for the year in which the security for the loan was sold. Under the 1943 Amendment for all taxable years beginning with 1942, a taxpayer who receives a loan from the Commodity Credit Corporation may, at his election, include the amount of such loan in his gross income for the taxable year in which the loan is received or for the taxable year in which the security is sold. When the taxpayer makes such an election, then he shall be bound by that election for all taxable years, unless he secures the permission of the Commissioner of Revenue to change to a different method of accounting. Application for permission to change the method of accounting and the basis upon which such return is made shall be filed within 180 days after the beginning of the taxable year to be covered by the return.

If the taxpayer elects, he may report the income in the taxable year in which the security is sold rather than the year in which the loan is received. In that case, the income realized from the disposition of such security constitutes income for that taxable year.

If a taxpayer elects under Minn. Stat. § 290.073 to include in his gross income the amount of a loan from the Commodity Credit Corporation for the taxable year in which it is received, then

A. No part of the amount realized by the Commodity Credit Corporation upon the sale or other disposition of the commodity pledged for such loan shall be recognized as income to the taxpayer, unless the taxpayer receives an amount in addition to that advanced to him as the loan, in which event such additional amount shall be included in the gross income of the taxpayer for the year in which received; and

B. No deductible loss to the taxpayer shall be recognized on account of any deficiency realized by the Commodity Credit Corporation on such loan if the taxpayer was relieved of liability for such deficiency.

Example: A, a taxpayer who elected for his taxable years 1972 and 1973, to include in gross income amounts received during those years as loans from the Commodity Credit Corporation, received as loans $500 in 1972 and $700 in 1973. In 1974 all of the pledged commodity was sold by the Commodity Credit Corporation for an amount of $200 less than the loan with respect to the commodity pledged in 1972 and for an amount of $150 greater than the loan with respect to the commodity pledged in 1973. A, in making his return for 1974, shall include in gross income the sum of $150 if it is received during that year, but will not be allowed a deduction for the deficiency of $200 unless he is required to satisfy such deficiency and does satisfy it during that year.

INCT 721 Renegotiated war contracts. A taxpayer who supplies goods, wares or merchandise, or performs services, or both, under a contract with the United States of America, or under a subcontract thereunder, or any agency thereof, and who is subject to renegotiation under the laws of the United States of America, or is required to renegotiate with his subcontractor, shall compute his tax liability without giving consideration to any adjustment of excessive profits renegotiated subsequent to the close of the taxable year.

A. In any case where a final determination of renegotiation has been completed subsequent to the close of any taxable year, the taxpayer shall be entitled to claim as a deduction from gross income in the year in which the determination is made the difference between

1. the amount determined to be excessive profits, and

2. the amount of Federal income and excess

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profits taxes applicable thereto. An example of this computation is shown in the following schedule:

Taxable net income—Year 1952 (before any adjustment for renegotiation or Federal income taxes paid)	$10,000,000.00
Federal income and excess profits taxes paid	5,000,000.00
Net	$ 5,000,000.00
Excess profits finally determined in 1952, applicable to the year 1951 . . . $5,000,000.00 Less applicable Federal income and excess profits taxes on above . . . 2,500,000.00 Difference Deductible . . . 2,500,000.00 Taxable net income for the year 1952 on which tax is to be computed	$ 2,500,000.00

B. In any case where a final determination of renegotiation has been completed subsequent to the close of the taxable year, and the net income for the year in which such final determination is made, computed without regard thereto, is less than the amount deductible as a result thereof as shown in the preceding example, the taxpayer shall be entitled to a refund of any state income and excise taxes paid, to the extent they were paid on or measured by the excess of

1. the amount which would be deductible as a result of such determination (as shown in the preceding example) over

2. the taxable net income computed without regard to such determination. An example of this computation is shown as follows:

Taxable net income—year 1951 (before any adjustments for renegotiation or Federal income taxes paid)		$11,000,000.00
Federal income and excess profit taxes paid (For year 1950)		7,000,000.00
Net		$ 4,000,000.00
Excessive profits finally determined in 1953, applicable to the year 1951	$10,000,000.00	
Less applicable Federal income and excess profits taxes on above	5,000,000.00	
Net renegotiated profits	$ 5,000,000.00	
Taxable net income year 1953 before renegotiation	4,000,000.00	
Amount of renegotiated profits deductible in year 1953	4,000,000.00	
Excess of difference over the amount of taxable net income		1,000,000.00
State income and excise tax computed on $1,000,000.00		54,000.00
Amount of refund of 1951 State income and excise taxes to which taxpayer is entitled		$ 54,000.00

The foregoing computations are based on the assumption that the taxpayer's entire taxable net income is assignable to Minnesota.

The following example illustrates a computation of taxable net income in cases where the total net income is subject to apportionment by formula:

Taxable net income—Year 1952 (before any adjustment for renegotiation)		$20,000,000.00
Percentage of net income assignable to Minnesota		25%
Minnesota taxable net income—Year 1952 (before any adjustment for renegotiation)		$ 5,000,000.00
Less excessive profits renegotiated and finally determined in 1952—applicable to year 1951	$10,000,000.00	
Deduct Federal income and excess profits taxes applicable to above	6,000,000.00	
Net renegotiated profits	$ 4,000,000.00	
Percentage of taxable net income assigned to Minnesota—Year 1951	15%	
Amount of net renegotiated profits deductible from Minnesota net income—Year 1952		$ 600,000.00
Minnesota taxable net income—Year 1952		$ 4,400,000.00

INCT 722 Dividends from state and national banks. Federal law controls in the case of individuals, estates and trusts. See Section 61(a)(7) of the Internal Revenue Code of 1954, as amended. Such dividends are included in a corporation's gross income under the provisions of Minn. Stat. § 290.085.

INCT 723 Inventories.

A. When inventories are required.

Inventories are necessary in order to properly reflect the net income in every case in which the production, purchase, or sale of merchandise is an income producing factor. All raw materials and supplies which will physically become a part of merchandise intended for sale, and all finished or partly finished goods which have been produced or acquired for sale, should be included in the inventory. Supplies of the type which are consumed as an incident to the conduct of business should not be included with the other merchandise in the inventory. Only merchandise title to which is vested in the taxpayer should be included in the inventory. The seller should include in his inventory goods under contract for sale but not yet segregated and applied to the contract, and goods out upon consignment, but should exclude from inventory goods sold, title to which has passed to the purchaser. A purchaser should include in inventory merchandise purchased, title to which is passed to him, although such merchandise is in transit or for other reasons has not been been reduced to physical possession, but should exclude goods ordered for future delivery, the title to which has not been transferred.

B. Valuation of inventories

An inventory valued in accordance with the best accounting practice in the trade or business and used by the taxpayer to show his financial position, can usually be accepted for tax purposes. No inventory practice will be considered as clearly reflecting the taxable income which is not consistent from year to year, and greater weight is to be given to consistency than to any particular method of inventorying or basis of valuation, provided that the method or basis used is substantially in accord with these regulations.

The bases most commonly used in valuing inventories are

1. cost, and

2. cost or market, whichever, is lower. When the inventory includes goods which are unsalable at normal prices or cannot be used for the purpose for which they were acquired, because of damage, imperfection, shop wear, change of style, odd or broken lots, or other similar causes, such goods should be valued at bona fide selling prices less costs. In the case of damage or imperfect raw materials or work in process, the basis of valuation must take into consideration the usability and condition of the goods, but in no case shall the value be less than scrap value. Bona fide selling price means the price at which the goods are offered for sale at or about the date of the inventory. The burden of proof will rest upon the taxpayer to show that the portions of the inventory in question were actually offered for sale at or about the date of the inventory, and to maintain adequate records of the disposition of the goods which will permit a verification of the inventory.

Whether the cost, or cost or market whichever is lower, basis of valuing inventories is used, the basis adopted must be applied with reasonable consistency to the entire inventory, and no change from one basis to the other will be permitted without first obtaining permission from the Commissioner.

Goods included in the inventory which have become so intermingled that they cannot be identified with specific invoices will be deemed to be the goods most recently purchased or produced and the cost thereof will be the aotual cost of goods purchased or produced during the period in which the quantity of goods in the inventory has been acquired.

When the system of accounting involves the keeping of perpetual inventory records, actual physical inventories must be taken at reasonable intervals and proper adjustments made to bring the books into accord with such physical inventories.

Inventories should be preserved as a part of the accounting records of the taxpayer in such a manner as to set forth clearly the number of units, prices and extensions. Suitable summaries should be preserved, showing the totals by classes or departments of the goods included in the inventory. The inventory records will be subject to investigation by the Commissioner and the taxpayer must, therefore, preserve such data as will be necessary to substantiate the correctness of the quantities and prices included therein.

C. Inventory valuation methods not permitted.

The following methods, among others, are sometimes used in the valuation of inventories, but are not permitted for income tax purposes:

1. Deducting reserves for anticipated price changes or estimated depreciation from the gross inventory.

2. Using a constant valuation from year to year for a so-called normal quantity of materials or goods on hand.

3. Excluding goods out on consignment from the inventory.

4. Including in the inventory goods ordered, but the title to which has not been acquired.

5. Valuing work in process at less than its proper value.

D. Inventories at cost. In the case of merchandise on hand at the beginning of the taxable year or purchased during the taxable year, "cost" means the invoice price less trade or other discounts, except cash discounts. Cash discounts are distinguished by being comparatively small in amount, usually approximately a fair interest rate and usually contingent upon prompt payment. Cash discounts may or may not be deducted from the invoice price, at the option of the taxpayer, provided a consistent practice is followed. Transportation or other necessary charges incurred in acquiring possession of the goods must be added to the net invoice price.

In the case of merchandise produced by the taxpayer since the beginning of the taxable year, "cost" means

1. the cost of raw materials and supplies entering into or consumed in connection with the product,

2. expenditures for direct labor, and

3. indirect expenses incident to and necessary for the production of the particular article, including in such indirect expenses a reasonable proportion of management expenses, but not including any cost of selling or return on capital, whether by way of interest or profit.

In any industry in which the usual rules for computation of cost of production are inapplicable, costs may be approximated upon such basis as may be reasonable and in conformity with the established trade practice in the particular industry. Among such are

4. farmers and raisers of livestock,

5. miners and manufacturers, who, by a single process or series of processes, derive a product of two or more kinds, sizes, or grades, the unit cost of which is substantially alike, and

6. retail merchants who use what is known as the "retail method" in ascertaining approximate cost.

E. Inventories at cost or market, whichever is lower.

Under ordinary circumstances and for normal goods in an inventory, "market" means the current bid price prevailing at the date of the inventory for the particular merchandise in the volume in which usually purchased by the taxpayer, and is applicable in the following cases:

1. of goods purchased and on hand; and

2. of basic elements of cost (materials, labor, and burden in goods in process of manufacture and in finished goods on hand; exclusive, however, of goods on hand or in process of manufacture for delivery upon firm sales contract (i.e., those not legally subject to cancellation by either party) at fixed prices entered into before the date of the inventory, which goods must be inventoried at cost.

Where no open market exists or where quotations are nominal, due to stagnant market conditions, the taxpayer must use such evidence of a fair market price at the date or dates nearest the inventory as may be available, such as specific purchases or sales by the taxpayer or others in reasonable volume and made in good faith, or compensation paid for cancellation of contracts for purchase commitments. Where the taxpayer in the regular course of business has offered for sale such merchandise at prices lower than the current price as above defined, the inventory may be valued at such prices less proper allowance for selling expense, and the correctness of such prices will be determined by reference to the actual sale of the taxpayer for a reasonable period before and after the inventory. Prices which vary materially from the actual prices so ascertained will not be accepted as reflecting the market.

Where the inventory is valued upon the basis of cost or market, whichever is lower, the market value of each article on hand at the inventory date shall be compared with the cost of the article, and the lower of such values shall be taken as the inventory value of the article.

F. Inventories by dealers in securities. A dealer in securities who in his books of account regularly inventories unsold securities on hand either:

1. At cost;

2. At cost or market, whichever is lower; or

3. At market value,

may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another method be authorized by the Commissioner pursuant to a written application therefore filed with the taxpayer's return. A dealer in securities in whose books of account separate computations of the gain or loss from the sale of various lots of securities sold are made on the basis of the cost of each lot shall be regarded, for the purpose of this regulation, as regularly inventorying his securities at cost. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation, irrespective of whether such buying or selling constitutes the carrying on of a trade or business and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule.

G. Inventories of miners and manufacturers.

A taxpayer engaged in mining or manufacturing who, by a single process or uniform series of processes, derives a product of two or more kinds, sizes, or grades, the unit cost of which is substantially alike, and who in conformity to a recognized trade practice allocates an amount of cost to each kind, size, or grade of product, which in the aggregate will absorb the total cost of production may, with the consent of the Commissioner, use such allocated cost as a basis for pricing inventories, provided such allocation bears a reasonable relation to the respective selling values of different kinds of products.

H. Inventories of retail merchants.

Retail merchants who employ what is known as the "retail method" of pricing inventories may make their return upon that basis, provided that the use of such method is designated upon the return, that accurate accounts are kept, and that such method is consistently adhered to, unless a change is authorized by the Commissioner. Under this method the goods in the inventory are ordinarily priced at the selling prices, and the total retail value of the goods in each department or of each class of goods is reduced to approximate cost by deducting the percentage which represents the difference between the retail selling value and the purchase price. This percentage is determined by departments of a store or by classes of goods, and should represent as accurately as possible the amounts added to the cost prices of the goods to cover selling and other expenses of doing business and the margin of profit. In computing the percentage above mentioned, proper adjustment must be made for all mark-ups and mark-downs.

A taxpayer maintaining more than one department in his store or dealing in classes of goods carrying different percentages of gross profit should not use a percentage of profit based upon an average of his entire business, but should compute and use in valuing his inventory the proper percentage for the respective deparments or classes of goods.

A physical inventory at retail selling price, reduced by mark-ups must be taken at the close of each year and the book inventory must be adjusted to agree with the physical inventory. If the mark-up in the opening inventory is different from the mark-up of current purchases, the latter mark-up should be used in closing inventory, unless substantial quantities of year-old merchandise appear in the closing inventory.

The books and records must be fully departmentalized so that merchandise with a similar percentage of mark-up is accounted for separately in the inventory.

The difference between the inventory taken on the old basis and the inventory taken on the basis of the "retail method" will constitute taxable income or deductible expense for the year in which the change is made. Any gross discrepancies between the new and old basis will be taken as an indication either that the inventory was improperly taken on the old basis or that the inventory upon the basis of the "retail method" does not reflect values which will properly account for the true taxable income.

I. Inventories of dealers in real estate. Real estate held by dealers in real estate must be carried at cost value and, therefore, cannot be included in inventories which are subject to valuation at cost or market, whichever is lower. Any increase or decrease in the market value of real estate held will not constitute a taxable gain or deductible loss until realized or sustained through sale or other disposition.

J. Inventories of lumber companies. The inventories of lumber companies shall be valued according to the general rules of cost or cost or market, whichever is lower. In order to determine the market value of goods in process and finished goods, such inventories must be analyzed as to their basic elements of cost, which include material, labor, and overhead. The purchase market of each of the basic elements of cost should be determined and the total thereof taken as the market. If the market thus determined is less than cost, the inventory should be valued upon that basis.

INCT 724 Returns for periods less than 12 months.

A. Short period not caused by change of accounting period. Whenever a return is required to be filed for a fractional part of a year for any reason other than that the taxpayer has changed his accounting period from one taxable year to another, the tax is computed in the same manner as though the return covered a full year. The requirements of paragraph B. of this regulation (annualizing taxable net income and prorating credits allowable under Minn. Stat. § 290.21) do not apply. Such an instance would arise where a corporation is organized or dissolved during the year.

B. Change of annual accounting period.

1. Returns for short period. In the case of a change in the annual accounting period of a taxpayer, a separate return must be filed for the short period of less than 12 months beginning with the day following the close of the old taxable year and ending with the day preceding the first day of the new taxable year. However, such a return is not required for a short period of six days or less, or 359 days or more, resulting from a change from or to a 52-53-week taxable year. See Minn. Stat. § 290.32(2) and INCT 725. In general, a return for a short period resulting from a change of annual accounting period shall be filed and the tax paid within the time prescribed for filing a return for a taxable year of 12 months ending on the last day of the short period.

2. Computation of tax. If a return is made for a short period resulting from a change of annual accounting period, the taxable income for the short period shall

KEY: New rules and both proposed and adopted additions to existing rules are printed in **boldface**. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules.

be placed on an annual basis by multiplying such income by 12 and dividing the result by the number of months in the short period. The tax for the short period shall then be prorated according to the ratio which the number of months in such period bears to twelve months.

If a return is made for a short period of more than six days, but less than 359 days, resulting from a change from or to a 52-53-week taxable year, the taxable net income for the short period shall be annualized and the tax computed on a daily basis, as provided in Minn. Stat. § 290.32(2) and paragraph A. 5. of INCT 725.

INCT 725 Adoption of or change to or from 52-53-week taxable year.

A. In general.

1. A new taxpayer may adopt the 52-53-week taxable year for his first taxable year if he keeps his books and computes his income on that basis, or if he conforms his books accordingly in closing them. The taxpayer must thereafter keep his books and report his income on the basis of the 52-53-week taxable year so adopted unless prior approval for a change is obtained from the Commissioner. See paragraph 4. of this regulation. The taxpayer shall file with his return for his first taxable year a statement containing the information required in paragraph 3. of this regulation. A newly-formed partnership may adopt a 52-53-week taxable year, without the permission of the Commissioner only if such a year ends either with reference to the same month in which the taxable years of all its principal partners end or with reference to the month of December.

2. A taxpayer, including a partnership, may change to a 52-53-week taxable year without the permission of the Commissioner if the 52-53-week taxable year ends with reference to the end of the same calendar month as that in which the former taxable year ended, and if the taxpayer keeps his books and computes his income for the year of change on the basis of such 52-53-week taxable year, or if he conforms his books accordingly in closing them. The taxpayer must continue to keep his books and compute his income on the basis of such 52-53-week taxable year unless prior approval for a change is obtained. See paragraph 4. of this regulation. The taxpayer shall indicate his election to change to such 52-53-week taxable year by a statement filed with his return for the first taxable year for which the election is made. This statement shall contain the information required in paragraph 3. of this regulation.

3. The statement referred to in paragraph 1. and 2. of this regulation shall contain the following information:

a. The calendar month with reference to which the new 52-53-week taxable year ends;

b. The day of the week on which the 52-53-week taxable year always will end; and

c. Whether the 52-53-week taxable year will always end on

(1) the date on which such day of the week falls in the calendar month, or

(2) on the date on which such day of the week falls which is nearest to the last day of such calendar month.

4. Where a taxpayer wishes to change to a 52-53-week taxable year and, in addition, wishes to change the month with reference to which the taxable year ends, or where a taxpayer wishes to change from a 52-53-week taxable year, he must obtain prior approval from the Commissioner, as provided in Minn. Stat. § 290.07, Subd. 1 and INCT 700.

5. If a change from or to a 52-53-week taxable year results in a short period (within the meaning of Minn. Stat. § 290.32 (2)) of 359 days or more, or six days or less, the tax computation under Minn. Stat. § 290.32(2) for putting the short period on an annual basis shall not apply. If the short period is 359 days or more, it shall be treated as a full taxable year. If the short period is six days or less, such short period is not a separate taxable year but shall be added to and deemed apart of the following taxable year. (In the case of a change from or to a 52-53-week taxable year not involving a change of the month with reference to which the taxable year ends, the tax computation under Minn. Stat. § 290.32(2) for putting the short period on an annual basis does not apply since the short period will always be 359 days or more, or six days or less). In the case of a short period which is more than six days but less than 359 days, taxable income for the short period shall be placed on an annual basis for the purpose of Minn. Stat. § 290.32(2) by multiplying such income by 365 and dividing the result by the number of days in the short period. In such case, the tax for the short period shall be the same part of the tax computed on such income placed on an annual basis as the number of days in the short period is of 365 days. The standard deduction is not allowed on a return for a short period and personal credits must be prorated according to Minn. Stat. § 290.06, Subd. 3(6).

6. The provisions of paragraph 5. are illustrated by the following examples:

Example (1). A taxpayer having a fiscal year ending April 30 elects for years beginning after April 30, 1972, a 52-53-week taxable year ending on the last Saturday in April. This election involves a short period of 364 days, from May 1, 1972, to April 28, 1973, inclusive. Since this short period is 359 days or more, it is not placed on an annual basis and is treated as a full taxable year.

Example (2). Assume the same conditions as in example (1), except that the taxpayer elects for years beginning after April 30, 1972, a taxable year ending on the Tuesday nearest to April 30. This election involves a short period of three days, from May 1 to May 3, 1972. Since this short period is less than seven days, tax is not separately computed for it. This short period is added to and deemed part of the following 52-week taxable year which would otherwise begin on May 4, 1972, and end on May 1, 1973. Thus, that taxable year is deemed to begin on May 1, 1972, and end on May 1, 1973.

B. Computation of net income and taxable net income. The principles of Minn. Stat. § 290.07, Subd. 6, relating to the taxable year for inclusion of items of gross income, and Minn. Stat. § 290.07, Subd. 7, relating to the taxable year for taking deductions, are generally applicable to 52-53-week taxable years. Thus, items of income and deductions are determined on the basis of a 52-53-week taxable year except that such items may be determined as though the 52-53-week taxable year were a taxable year consisting of 12 calendar months if such practice is consistently followed by the taxpayer and if income is clearly reflected thereby. In the case of depreciation, unless some other practice is consistently followed, the allowance shall be determined as though the 52-53-week year were a taxable year consisting of 12 calendar months.

Amortization deductions for the taxable year shall be determined as though the 52-53-week year were a taxable year consisting of 12 calendar months.

INCT 726 Computation of tax for fiscal year change of rates. If a taxpayer files his return for a period beginning in one calendar year and ending in the following calendar year and the law applicable to the first calendar year is different from the law applicable to the second calendar year, the tax shall be computed as follows:

A corporation files its returns on a fiscal year ending September 30, 1971. Its net income for that period is $7,000.00. The specific credit allowed under Minn. Stat. § 290.21(1) is $500.00, and the contributions allowed as credits against this net income are $100.00. This leaves a balance subject to tax of $6,400.00.

Example — Computation of Tax

1. Net income		$7,000.00
2. Less: Specific Credit	$500.00	
Minnesota Contributions	100.00	600.00
3. Balance Subject to Tax		$6,400.00
Tax prior to 7-1-71		
4. Tax on item 3 @ 11.33%		725.12
5. Tax applicable to period prior to 7-1-71(9/12 of item 4)		543.84
Tax subsequent to 7-1-71		
6. Tax on item 3 @ 12%		768.00
7. Tax applicable to period subsequent to 7-1-71 (3/12 of item 6)		192.00
8. Add: Tax on Line 5		543.84
9. Tax for Fiscal Year		$ 735.84

INCT 727 Evasion of tax by corporations. In any case where a corporation, which is liable to taxation under this Act, conducts business transactions with its members or stockholders, or with any person or corporation interested in the business of such corporation, in such a manner as to reduce the taxable net income attributable to this State, the Commissioner may determine the income of the corporation so as to reflect what would have been its reasonable taxable net income but for such business transaction. Among others, the following devices commonly employed to distort income attributable to this State will not be recognized in determining taxable net income:

A. The purchase, or sales, by or between corporations or others at a price greater or less than the price paid in the usual course of business by independent purchasers.

B. The fixing of income at an arbitrary figure by contract or agreement.

C. The payment of arbitrary amounts for so-called advisory, management or counseling services.

D. Arbitrary charges for, or allocation of, improper overhead expenses, such as officers' salaries, rents, auditing, etc.

E. Arbitrary agreements for the purchase, or sale of, goods or services at fixed prices, or on a basis of cost, actual or estimated, or on a basis of cost plus a fixed percentage or amount.

KEY: New rules and both proposed and adopted additions to existing rules are printed in **boldface**. Proposed and adopted deletions from existing rules are printed in [single brackets]. <u>Underlining</u> indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules.

INCT 728 Consolidated statements. The Commissioner may permit or require consolidated statements where it appears that the income of a corporation operating in this State cannot be determined without reference to the operations of other corporations with which such company may be affiliated. The purpose of consolidated statements is to aid in the determination of the net income properly received by the affiliated or related corporations, and such statements should be distinguished from consolidated returns of the combined taxable net income of all corporations in the consolidation.

Consolidated statements may be required where a corporation has its income regulated through contract or other arrangement with its stockholders or affiliated interests. Such an instance might arise where a corporation's income is improperly reduced through the payment of excessive expenses to stockholders or affiliated interests. The taxable net income may be determined without regard to the allowance of such expenses which are deducted by the corporation in excess of a fair and reasonable amount.

INCT 729 Consolidated returns. Only an affiliated group of corporations which comes within the purview of Minn. Stat. § 290.34, Subd. 3 has the privilege of filing a consolidated return. This encompasses only those corporations whose principal business is that of a common carrier by railroad or a corporation whose assets consist principally of the stock in such a corporation and which itself does not operate any business other than that of a common carrier by railroad.

Should such an affiliated group desire to file a consolidated return for any taxable year the privilege must be exercised at the time of making the return of the common parent corporation for such year. Once the privilege is exercised, separate returns cannot be made for such year.

The consolidated return must include the income of the common parent corporation and of each subsidiary for the entire taxable year. If a corporation becomes a member of the affiliated group during the taxable year of the group, the consolidated return must include its income from the time when it became a member of the group. The taxable year of the parent corporation shall be considered as the taxable year of the affiliated group which makes a consolidated return, and the consolidated net income must be computed on the basis of the taxable year of the parent corporation. The net income of the several corporations shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations subject to the elimination of unrealized profit and losses in transactions between members of the affiliated group and intercompany transactions. The statement of gross income and deductions must be set forth in the consolidated return in such a manner that the details of the items of gross income, deductions, and credits for each member of the affiliated group may be readily ascertained. Only one credit provided by Minn. Stat. § 290.21(1) shall be allowed in computing the tax on such consolidated return.

For the purpose of determining consolidated net income all members of the affiliated group shall adopt that method of accounting which clearly reflects the consolidated net income. A method of accounting which does not treat with reasonable consistency all items of gross income and deductions of the various members of the group shall not be regarded as clearly reflecting the consolidated net income. If the members of an affiliated group have established different methods of accounting, each member may retain such method with the consent of the Commissioner provided that the consolidated net income is clearly reflected, and provided further that intercompany transactions affecting consolidated net income between members of the group shall be eliminated and adjustments on account of such transactions shall be made with reference to a uniform method of accounting to be selected by the members of the group with the consent of the Commissioner.

Chapter Eight: Exclusions From Gross Income

INCT 800 Exclusions from gross income. Minnesota gross income for individuals means federal "adjusted gross income", except as modified in Minn. Stat. § 290.01, subd. 20 and except as is otherwise provided in Minn. Stat. ch. 290. Any item excluded in arriving at gross income under Minn. Stat. § 290.01, subd. 20 shall not be again excluded under Minn. Stat. § 290.08.

INCT 801 Gifts and inheritance. Federal law controls in the case of individuals, estates, and trusts. See the Internal Revenue Code of 1954, as amended, which provides, in part, in Section 102, as follows:

"(a) General Rule — Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

"(b) Income — Subsection (a) shall not exclude from gross income (1) the income from any property referred to in subsection (a); or (2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income. . . ."

INCT 802 Certain death benefits. Federal law controls in the case of individuals, estates and trusts. See Section 101 of the Internal Revenue Code of 1954, as amended, which

A. provides generally for the exclusion from income of amounts under a life insurance contract paid by reason of the death of the insured, and

B. provides concerning amounts paid by reason of the death of an employee, in various situations.

INCT 803 Annuities and proceeds of endowment and life insurance contracts. Federal law controls in the case of individuals, estates and trusts. See Section 72 of the Internal Revenue Code of 1954, as amended, which sets forth rules applicable to the taxability of annuities and proceeds of endowment and life insurance contracts, in various situations.

INCT 804 Amounts received under accident and health plans. Federal law controls in the case of individuals, estates and trusts. See Section 104 and Section 105 of the Internal Revenue Code of 1954, as amended, which provide concerning the taxability of amounts received under accident and health plans and for injuries or sickness, except that Minn. Stat. § 290.08, subd. 5(d) is applicable to require the inclusion in gross income of the amount of any reimbursement of the amounts of any expenses of personal injury or sickness, to the extent these were applied as deductions from income in any previous taxable year.

INCT 805 Pensions, benefits, and allowances from state and United States. Under Minn. Stat. § 290.08, Subd. 6 a deduction shall be made from federal adjusted gross income of "Amounts, including interest, received by any person from the United States or from any state or any of their political or governmental subdivisions, either as a refund of contributions to, or by way of payment as a pension, public employee retirement benefit, unemployment compensation benefit, social security benefit or railroad retirement benefit or unemployment compensation benefit, family allotment or other similar allowance."

INCT 806 Interest from Minnesota governmental obligations — obligations of other states. Section 103 of the Internal Revenue Code of 1954, as amended, excludes generally from income any interest on obligations of any state or its subdivisions, with the exception of industrial development bonds. To the extent not otherwise excluded from federal adjusted gross income, Minn. Stat. § 290.08, Subd. 7 provides for the deduction from federal adjusted gross income of interest income from obligations of the state of Minnesota or its subdivisions. Corporations and national and state banks are subject to tax on such interest. Minn. Stat. § 290.08, subd. 13.

In the case of interest income from the obligations of any other state or its subdivisions that are excluded from federal adjusted gross income, this income is added to federal adjusted gross income to arrive at Minnesota gross income. Minn. Stat. § 290.01, subd. 20(a)(1).

INCT 807 Interest from obligations of the United States. Interest from obligations of the United States, its agencies, or instrumentalities is excluded from income only if federal law provides that it is exempt from state taxation. EXAMPLE: Interest on debentures of the United States Banks for Cooperatives is subject to Federal income tax but is not subject to state income tax. Where the federal adjusted gross income figure includes this type of interest, the interest is subtracted from the federal figure to arrive at Minnesota gross income. Minn. Stat. § 290.01, subd. 20(b)(1).

The exclusion does not aply to corporations which are taxable under the franchise tax provisions of Minn. Stat. § 290.02, as the exclusion is only from state income tax, not from a state franchise tax, Minn. Stat. § 290.08, subd. 13.

INCT 808 Patronage dividends of cooperatives. Cooperative buying, selling or producing associations shall exclude from gross income any amounts distributed as patronage dividends. Such dividends are included in federal adjusted gross income of the recipient. See Section 61(a)(7), Section 116, and Section 1385 of the Internal Revenue Code, as amended.

INCT 809 Improvements by lessee on lessor's property. Individuals, estates, and trusts are governed by federal adjusted gross income. See Section 109 of the Internal Revenue Code of 1954, as amended, which provides that buildings or other improvements by the lessee are not income to the lessor on termination of the lease. The same result applies to corporate lessors under Minn. Stat. § 290.08, subd. 14.

INCT 810 Rental value of parsonages. Federal law controls. See Section 107 of the Internal Revenue Code of 1954, as amended, which excludes from income the rental values of a home furnished to a minister or the rental allowance paid to him and used by him to rent or provide a home.

INCT 811 Mustering-out payments. Federal law controls. See Section 113 of the Internal Revenue Code of 1954, as amended, which excludes from income amounts received as mustering-out payments by members of the Armed Forces of the United States. This is in addition to military pay exclusion of Minn. Stat. § 290.65.

INCT 812 Meals or lodging furnished for the convenience of the employer. Federal law controls. See Section 119 of the Internal Revenue Code of 1954, as

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amended, which provides for the exclusion from gross income of such items in certain cases.

INCT 813 Scholarship and fellowship grants. Federal law controls. See Section 117 of the Internal Revenue Code of 1954, as amended, which provides for the exclusion from gross income of certain fellowship and scholarship grants.

INCT 814 Contributions to capital of corporation. In the case of a corporation, Minn. Stat. § 290.08, subd. 19 provides an exclusion from gross income with respect to any contribution of money or property to the capital of the taxpayer. Thus, if a corporation requires additional funds for conducting its business and obtains such funds through voluntary pro rata payments by its shareholders, the amounts so received being credited to its surplus account or to a special account, such amounts do not constitute income, although there is no increase in the outstanding shares of stock of the corporation. In such a case the payments are in the nature of assessments upon, and represent an additional price paid for, the shares of stock held by the individual shareholders, and will be treated as an addition to and as a part of the operating capital of the company. Minn. Stat. § 290.08, subd. 19 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer to limit production. See Minn. Stat. § 290.136, subd. 8 for the basis of property acquired by a corporation through a contribution to its capital by its stockholders or by nonstockholders.

INCT 815 Income from discharge of indebtedness. Federal law controls in the case of individuals, estates and trusts. See Section 61(a)(12), Section 108 and Section 1017 of the Internal Revenue Code of 1954, as amended, concerning income and exclusion from income and consent to reduce the basis of property used in the trade or business of an individual.

INCT 815 applies to corporations.

A. Minn. Stat. § 290.08, Subd. 20 provides a specific exclusion from gross income, at the taxpayer's election, of the amount of income attributable to the discharge of indebtedness, in whole or in part, within the taxable year. In order to take advantage of the exclusion, the taxpayer must file a consent to applicable regulations relating to the adjustment of basis, in accordance with INCT 815. This section applies to indebtedness incurred or assumed by a corporation, and it covers any such indebtedness for which the corporate taxpayer is liable or subject to which the taxpayer holds property.

B.

1. If, as of the first day of the taxable year in which a discharge of indebtedness occurs, there is unamortized premium, the amount of the income attributable to such premium shall be excluded from gross income. For example: On January 1, 1957, the M Corporation (which files its return on a calendar year basis) had outstanding an issue of A bonds of the face value of $10,000, and as of that day there was $100 unamortized premium on this bond issue. On September 1, 1957, the M Corporation purchased these bonds for $9,000. The total amount to be excluded from gross income under this section is $1,100.

2. If, as of the first day of the taxable year in which a discharge of indebtedness occurs, there is unamortized discount, the amount of the deduction attributable to such discount shall be disallowed as a deduction. For example: On January 1, 1957, the N Corporation (which files its return on a calendar year basis) had outstanding an issue of B bonds of the face value of $10,000, and as of that day there was $50 unamortized discount on this bond issue. On September 1, 1957, the N Corporation purchased these bonds of $9,000. The total amount to be excluded from gross income under this section is $950.

C. Making and filing of consent. In order to take advantage of the exclusion from gross income provided by Minn. Stat. § 290.08, Subd. 20, a taxpayer must file with his return for the taxable year a consent to have the basis of his property adjusted in accordance with the regulations prescribed by the Commissioner which are in effect at the time of filing such return. In special cases, however, where the taxpayer establishes to the satisfaction of the Commissioner reasonable cause for failure to file the necessary consent with his original return, he may file the consent with an amended return or claim for credit or refund; and in such cases, the consent shall be to the regulations which, at the time of filing the consent are applicable to the taxable year for which such consent is filed. In all cases the consent shall be made by or on behalf of the taxpayer in duplicate, in accordance with these regulations and the instructions on the form or issued therewith.

D. Adjusted basis; discharge of indebtedness; general rule.

1. In addition to the adjustments provided in Minn. Stat. § 290.12, subd. 2 and the regulations thereunder which are required to be made with respect to the cost or other basis of property, a further adjustment shall be made in any case in which there shall have been

an exclusion from gross income under Minn. Stat. § 290.08, subd. 20 on account of a discharge of indebtedness during the taxable year. Such further adjustment shall, except as otherwise provided in INCT 815, be made in the following manner and order.

a. In the case of indebtedness incurred to purchase specific property (other than inventory or notes or accounts receivable), whether or not a lien is placed against such property securing the payment of all or part of such indebtedness, which indebtedness shall have been discharged, the cost or other basis of such property shall be decreased by an amount equal to the amount excluded from gross income under Minn. Stat. § 290.08, subd. 20 and attributable to the discharge of the indebtedness so incurred with respect to such property;

b. In the case of specific property (other than inventory or notes or accounts receivable) against which, at the time of the discharge of the indebtedness, there is a lien (other than a lien securing indebtedness incurred to purchase such property) the cost or other basis of such property shall be decreased by an amount equal to the amount excluded from gross income under Minn. Stat. § 290.08, subd. 20 and attributable to the discharge of the indebtedness secured by such lien;

c. Any excess of the total amount excluded from gross income under Minn. Stat. § 290.08, subd. 20 over the sum of the adjustments made under subparagraphs a. and b. of this paragraph shall next be applied to reduce the cost or other basis of all the property of the debtor (other than inventory and notes and accounts receivable) as follows: The cost or other basis of each unit of property shall be decreased in an amount equal to such proportion of such excess as the adjusted basis (without reference to this section) each such unit of property bears to the sum of adjusted bases (without reference to this section) of all the property of the debtor other than inventory and notes and accounts receivable;

d. Any excess of the total amount excluded from gross income under Minn. Stat. § 290.08, subd. 20 over the sum of the adjustments made under subparagraphs a., b. and c. of this paragraph shall next be applied to reduce the cost or other basis of inventory and notes and accounts receivable, as follows: The cost or other basis of inventory or notes or accounts receivable, as the case may be, shall be decreased in an amount equal to such proportion of such excess as the adjusted basis of inventory, notes receivable or accounts receivable, as the case may be, bears to the sum of the adjusted bases of such inventory and notes and accounts receivable;

In the application of subparagraphs a., b., c. and d. of this paragraph, no decrease in the cost or other basis of any property shall exceed the amount of adjusted basis of such property without reference to this section.

2. For the purpose of this section:

a. Except where the context otherwise requires, property means all of the debtor's property, other than money;

b. The phrase "indebtedness incurred to purchase" includes

(1) indebtedness for money borrowed and applied in the purchase of property and

(2) an existing indebtedness secured by a lien against the property which the debtor, as purchaser of such property, has assumed to pay;

c. The phrase "amount excluded from gross income under Minn. Stat. § 290.08, subd. 20" means the amount of income excluded under that section reduced by any deduction disallowed under that section for unamortized discount;

d. Adjustments to basis shall be made;

(1) In the case of property owned on the first day of the taxable year, as of that day;

(2) In the case of property acquired after the first day of the taxable year, as of the day so acquired — regardless of the time such property was subsequently sold, exchanged, or otherwise disposed of by the taxpayer;

e. Whenever a discharge of indebtedness is accomplished by a transfer of the taxpayer's property in kind, the difference between the amount of the obligation discharged and the fair market value of the property transferred is the amount which may be applied in reduction of basis;

f. Regardless of the amount excluded by the taxpayer from his gross income under Minn. Stat. § 290.08, subd. 20, the maximum amount by which basis may be reduced in respect of the discharge of any indebtedness is the amount of income resulting from the discharge of such indebtedness; and

g. Any reduction in basis which remains to be taken (by reason of an exclusion from gross income under Minn. Stat. § 290.08, subd. 20 after the application of subparagraph a. of paragraph 1. of this section

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shall be applied first against property of a character subject to the allowance for depreciation under Minn. Stat. § 290.09, subd. 7, property with respect to which a deduction for amortization is allowable under Minn. Stat. § 290.09, subd. 11 or Minn. Stat. § 290.09, subd. 20, and property with respect to which a deduction for depletion is allowable under Minn. Stat. § 290.09, subd. 8, in the order in which such property is described in subparagraphs b. and c. of paragraph 1. of this section. Any further adjustment in basis required to be made under Minn. Stat. § 290.08, subd. 20 shall be applied against other property in the order prescribed in subparagraphs b., c. and d., of paragraph 1. of this section.

3. The application of paragraph 1. of this section may be illustrated by the following examples:

Example (1). On January 1, 1957, the N Corporation owned an office building, which it sold in March 1957. In June 1957 it purchased a factory building. In October 1957 the N Corporation bought in its outstanding bonds at less than face value. Assuming that there is a proper exclusion from gross income under Minn. Stat. § 290.08, subd. 20, the basis of each building shall be adjusted under Minn. Stat. § 290.08, subd. 20 for the taxable year 1957. (But see INCT 815.)

Example (2). The M Corporation had outstanding an issue of A bonds which it had sold at a premium and an issue of B bonds which it had sold at a discount. In July 1957 the M Corporation purchased such outstanding bonds for less than face value. The amount of income attributable to the discharge of the A bonds is $1,000 and the amount of unamortized premium (as of the first day of the taxable year in which the discharge occurred) is $200. The amount of income attributable to the discharge of the B bonds is $1,000 and the amount of unamortized discount (as of the first day of the taxable year in which the discharge occurred) is $50. Each issue of bonds is regarded as a separate indebtedness and the M Corporation may elect under Minn. Stat. § 290.08, subd. 20 with respect to each issue or both issues. If the M Corporation elects under Minn. Stat. § 290.08, subd. 20 to have excluded from gross income the amount of income attributable to the discharge of the issue of A bonds, the total reduction in basis of property of the M Corporation shall not exceed $1,200. If the M Corporation elects with respect to the B bonds, the total reduction in basis shall not exceed $950. If the M Corporation elects with respect to both bond issues, the total reduction in basis shall not exceed $2,150.

E. Adjusted Basis; discharge of indebtedness; special cases.

1. The preceding material prescribes the general rule to be followed in adjusting basis of property where there is a proper exclusion from gross income under Minn. Stat. § 290.08, subd. 20. The taxpayer may, however, have the basis of his property adjusted in a manner differing from that set forth above in upon a proper showing to the satisfaction of the Commissioner. Variations from such general rule may, for example, involve adjusting the basis of only part of the taxpayer's property or adjusting the basis of all the taxpayer's property, according to a fixed allocation.

2. A request for variations from the general rule shall be filed by the taxpayer with his return for the taxable year in which the discharge of indebtedness occurred unless a consent is permitted after the original return has been filed, in which case such request shall be filed with the amended return or claim for credit or refund, as the case may be. Agreement between the taxpayer and the Commissioner as to any variations from such general rule shall be effected only by a closing agreement. If no agreement is reached between the taxpayer and the Commissioner as to the variations from the general rule, then the consent filed shall be deemed to be a consent to the application of such general rule and such general rule shall prevail in the determination of the basis of the taxpayer's property. If no agreement is reached between the taxpayer and the Commissioner as to variations from the general rule and the taxpayer specifically states that he does not consent to the application of the general rule, then Minn. Stat. § 290.08, subd. 20 shall not apply.

INCT 816 Taxability of employee beneficiary under annuity purchased by employer. Federal law controls. See Section 403 of the Internal Revenue Code of 1954, as amended, concerning taxability of employee beneficiary under annuity purchased by employer.

INCT 817 Prizes and awards. Federal law controls for individuals, estates and trusts. See Section 74 of the Internal Revenue Code of 1954, as amended, concerning the inclusion or exclusion of amounts received as prizes or awards in gross income.

Chapter Nine: Deductions

INCT 900 Limitations in determining allowable deductions.

A. A deductible item allocable against a class of income not taxable by Minnesota or allocable against income not assignable to Minnesota shall not be allowed as a deduction.

B. A deduction which is allowable in arriving at gross income under Minn. Stat. § 290.01, subd. 20 shall not be again deducted under Minn. Stat. § 290.09.

C. In the case of income subject to apportionment, deductions shall be allocable to the extent provided in Minn. Stat. § 290.19, subd. 1.

INCT 901 Business expenses. Minn. Stat. § 290.09, subd. 2 provides for the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . ." Such expenses are deductible in arriving at federal adjusted gross income of individuals under the provisions of Section 162 of the Internal Revenue Code of 1954, as amended. An individual's business traveling expenses are included in the allowable business deductions under the federal Code. Ordinarily the business expenses for a corporation are the same as those allowed under the Internal Revenue Code and Regulations.

INCT 902 Expenses for the production of income. Minn. Stat. § 290.09, subd. 2 provides for the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year

A. For the production or collection of income;

B. For the management, conservation, or maintenance of property held for the production of income; or

C. In connection with the determination, collection, or refund of any tax."

In the case of individuals, such expenses are deductible to the same extent as they are deductible under the provisions of Section 212 of the Internal Revenue Code of 1954, as amended. Such expenses, in the case of a corporation, are generally deductible to the same extent as they are allowed as business expenses under the Internal Revenue Code and Regulations.

INCT 903 Campaign expenditures of candidate for public office. Campaign expenditures are deductible, in an amount not exceeding the limits stated in Minn. Stat. § 211.06, provided the candidate did not exceed these limitations on expenditures, and provided the candidate personally paid these expenditures and was not reimbursed for them.

INCT 904 Interest. Interest paid or accrued within the taxable year on indebtedness is deductible with the following exceptions:

A. Interest on indebtedness incurred or continued to purchase or carry obligations or securities, the income from which is excludible from gross income under Minn. Stat. § 290.08. (However, interst paid by corporations taxable under Minn. Stat. § 290.02 on indebtedness incurred or continued to purchase or carry obligations referred to in Minn. Stat. § 290.08 is deductible because the income from these obligations is taxable to the corporation.)

B. Interest on indebtedness incurred or continued in connection with purchasing or carrying a single premium life insurance, annuity, or endowment contract (see Minn. Stat. § 290.09, Subd. 3(b) for the definition of such contracts).

INCT 905 Taxes. Taxes held or accrued within the taxable year are deductible except:

A. Minnesota state income and franchise taxes and Minnesota cigarette and tobacco products excise taxes.

B. Special assessments on real estate levied to defray the expenses of local improvements considered to result in benefits inuring to the property assessed, such as street, sidewalk, sewer and other like improvements.

C. Inheritance, estate and gift taxes except as provided in Minn. Stat. § 290.077, subd. 4.

D. Taxes paid to another state on tangible personal property or real property located within that state.

E. Federal income taxes of corporations or national or state banks imposed on income received after July 1, 1971. See Minn. Stat. § 290.18, subd. 2.

F. Minnesota sales taxes if not assessed to and paid by the individual taxpayer. Thus, the amount of sales tax paid by a contractor for the purchase of materials and supplies used in the construction of a building is not deductible by the owner of the building even though all costs (including sales taxes) are, in effect, "passed on" by the contractor as part of the contract price or sales price of the building.

G. The portion of the real estate taxes on a homestead paid during a taxable year, to the extent such taxes were used to claim a senior citizen's tax credit under Minn. Stat. § 290.0603 or the special property tax credit under Minn. Stat. § 290.066 on a tax return for the previous year, or to the extent that a credit is obtained under the Minnesota Income-Adjusted Homestead Credit Act (Minn. Stat. ch. 290A).

H. Taxes paid to any foreign country or possession of the United States by any corporation or bank to the extent that these taxes are used as a credit against federal income taxes.

It should be noted that if refunds or credits of Minnesota income tax or income tax of any other state are included in federal adjusted gross income, these amounts are deductible to arrive at Minnesota gross income. See Minn. Stat. § 290.01, Subd. 20(b)(6).

The amount of federal income taxes or federal self-

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employment taxes that are allowable deductions for individuals, estates and trusts are subtracted from Minnesota gross income to arrive at Minnesota adjusted gross income. See INCT 1005 concerning what portion of federal income taxes is deductible. See INCT 1004 concerning what portion of federal self-employment taxes is deductible.

Employee contributions under the federal social security act (FICA) or under the federal railroad retirement act are not deductible taxes. See INCT 1004.

INCT 906 Losses. As a general rule, any losses sustained during the taxable year, which are not compensated for by insurance or otherwise, are allowable as a deduction to the same extent as such losses are allowed under Section 165 of the Internal Revenue Code of 1954, as amended. There are some differences.

It must first be determined that the loss, of a type defined in Section 165 of the federal Code, qualifies as a Minnesota loss within the limitations set forth in INCT 900.

The full amount of an individual's loss arising from casualty or the theft of property not connected with a trade or business is allowable on the Minnesota return. It is not reduced by $100 as provided by the federal law. Such a loss may not be claimed on the Minnesota income tax return if it is claimed on the Minnesota inheritance tax return, but it may otherwise be claimed on the Minnesota income tax return even though it was claimed on the federal estate tax return.

Both the federal Code and the state law provide that the taxpayer has an election to deduct disaster losses in the year of the disaster or the preceding year. The state law further provides that if the disaster loss is claimed in different taxable years for state and federal purposes, appropriate modifications shall be allowed or required for taxable years in order to prevent duplication or omission of such deduction.

The state law does not allow the deduction of a loss due to the confiscation of property by the government of Cuba.

INCT 907 Bad debts. In the case of individuals, estates, and trusts there is allowed a deduction for bad debts, which is included in arriving at federal adjusted gross income. Section 166 of the Internal Revenue Code of 1954, as amended provides for the deduction.

Corporations are allowed a deduction for bad debts as provided in Minn. Stat. § 290.09, Subd. 6. The deduction is generally the same as that provided under Section 166 of the federal Code, however, there are special provisions in the Minnesota law which limit the bad debt reserves of savings, building and loan associations and mutual savings or cooperative banks.

The allowance of a bad debt deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 900.

INCT 908 Depreciation. Minn. Stat. § 290.09, Subd. 7 provides that a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business or of property held by the taxpayer for the production of income shall be allowed as a depreciation deduction.

The amount of the deduction that is allowable for depreciation under Section 167 of the Internal Revenue Code of 1954, as amended constitutes a reasonable allowance under Minn. Stat. § 290.09, Subd. 7.

The allowance of a depreciation deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 900.

INCT 909 Depletion. Minn. Stat. § 290.09, subd. 8 provides for the deduction of a reasonable allowance for depletion in the case of mines, oil and gas wells, other natural deposits, and timber. The amount of the deduction allowed for depletion under the provisions of Section 612 of the Internal Revenue Code of 1954, as amended, constitutes a reasonable allowance under Minn. Stat. § 290.09, subd. 8.

The deduction allowed for depletion of copper or nickel deposits is the percentage depletion rate determined under the provisions of Sections 613 and 614 of the Internal Revenue Code of 1954, as amended.

The allowance of a depletion deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 900.

INCT 910 Medical expenses. The taxpayer is permitted to deduct the following expenses: Payments (not compensated for by insurance or otherwise) for hospitalization, nursing, medical, surgical, dental and other healing services, including institutional care and treatment for the mentally ill and physically handicapped and for medical supplies, ambulance hire and premiums paid for hospitalization insurance and medical service insurance for himself or his dependents during the taxable year.

No deduction is allowed for expenses of travel to obtain medical or hospital care.

If payments are claimed as a deduction in one taxable year and the taxpayer obtains reimbursement of these payments in a subsequent taxable year, the reimbursement shall be included in taxpayer's gross income to the extent of such deduction claimed in the previous taxable year. Minn. Stat. § 290.01, Subd. 20(a)(5).

INCT 911 Circulation expenditures. A deduction is allowable under Minn. Stat. § 290.09, subd. 16 of all expenditures to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical to the same extent as such expenditures are allowable as deductions under the provisions of Section 173 of the Internal Revenue Code of 1954, as amended.

The allowance of the deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 2009(1).

INCT 912 Taxes and interest paid by cooperative housing corporation tenant-stockholder. A tenant-stockholder is allowed a deduction under Minn. Stat. § 290.09, subd. 17 for taxes and interest paid or accrued to a cooperative housing corporation to the same extent as the deduction is allowed under Section 216 of the Internal Revenue Code of 1954, as amended.

The allowance of the deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 900.

INCT 913 Research or experimental expenditures. A taxpayer may deduct research or experimental expenditures in the taxable year in which paid or incurred, or the expenditures may be amortized over a period of not less than 60 months, under Minn. Stat. § 290.09, subd. 18 to the same extent as provided in Section 174 of the Internal Revenue Code of 1954, as amended.

The allowance of the deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 900.

INCT 914 Organizational expenditures. A corporation may amortize its organizational expenditures over a period of not less than 60 months, under Minn. Stat. § 290.09, subd. 18 to the same extent as provided in Section 248 of the Internal Revenue Code of 1954, as amended.

The allowance of the deduction for Minnesota income tax purposes is subject, however, to the limitations set forth in INCT 900.

INCT 915 Soil and water conservation expenditures. A taxpayer engaged in the business of farming may generally deduct soil and water conservation expenditures under Minn. Stat. § 290.09, subd. 21 to the same extent as such expenditures are deductible under Section 175 of the Internal Revenue Code of 1954, as amended.

The deduction for Minnesota income tax purposes is allowed only if the farm is situated within the state of Minnesota. Income from a farm located outside of Minnesota is not taxed by Minnesota. Minn. Stat. § 290.17. Any expenses connected with or allocable against income not included in the measure of the Minnesota tax are not allowed as deductions. Minn. Stat. § 290.10(9).

The maximum amount deductible in any taxable year is limited to 25 percent of the gross income derived from farming during the taxable year, with any excess being deductible in succeeding taxable years in order of time. Similarly, the amount deductible in each succeding year (including the soil and water conservation expenditures attributable to such year) cannot exceed 25 percent of the gross income derived from farming during such succeeding taxable year.

Soil and water conservation expenditures are expenses arising from a farm as to which the deductions are limited by Minn. Stat. § 290.09, subd. 29. See INCT 922 for an explanation of these limitations.

INCT 916 School tuition and transportation. A deduction from gross income is allowed for certain amounts the taxpayer has paid to others during the taxable year for a dependent's tuition, transportation, textbooks and other instructional materials and equipment while attending a public or non-public elementary or secondary school located in Minnesota, Iowa, North Dakota, South Dakota, or Wisconsin.

The total deduction for any dependent in any taxable year shall not exceed $500 for grades kindergarten to 6th grade, or $700 for grades 7 to 12.

Only those amounts paid for textbooks, instructional materials, and equipment used in teaching subjects that are commonly taught in Minnesota public elementary and secondary schools are deductible. The cost of instructional books and materials used for the purpose of inculcating religious tenets, doctrines or worship are not deductible.

A dependent for the purpose of this deduction is the same as a dependent under Minn. Stat. § 290.06, Subd. 3c. See INCT 500.

A dependent is attending an elementary or secondary school while either:

A. physically attending an elementary or secondary school, or

B. receiving instruction given by an elementary or secondary school to students who are unable to physically attend classes conducted at such school, or

C. receiving instruction from a private teacher or school which is not an elementary or secondary school, provided that such instruction was acceptable for credit by the elementary or secondary school in which the dependent was enrolled.

INCT 917 Investment credit deductions, recapture. Individuals, estates, and trusts shall deduct from federal adjusted gross income, for property acquired on or after January 1, 1973, the amount of any investment credit allowed under Section 38 of the Internal Revenue Code, as amended through December 31, 1974, to the extent that it is connected with or allocable against the production or receipt of income taxed by Minnesota. Corporations are not entitled to any such deductions from gross income as to property acquired on or after January 1, 1973.

If property on which a deduction has been claimed under Minn. Stat. § 290.09, Subd. 24, or under Minn. Stat. § 290.01, Subd. 20(b)(9) is later disposed of under circumstances such that a "recapture" results under Section 47 of the Internal Revenue Code as amended through December 31, 1974, the amount of such recapture shall be added to the taxpayer's federal adjusted gross income (in the case of corporations, the "recapture" amount is added to gross income).

INCT 918 Exploration and development expenditures. Minn. Stat. § 290.09, Subd. 25 provides a deduction from income of the amount of expenditures for exploration or development of copper, nickel, or copper-nickel mines or deposits, or other natural deposits (other than oil or gas well).

INCT 919 Expenses for dependent child care and care of disabled dependents. A taxpayer may deduct certain expenses for the care of dependent children under 13 years of age or for care of disabled dependents where such care is necessary to permit taxpayer to be gainfully employed. The deduction cannot exceed $600 for one dependent or $900 for two or more dependents.

The deduction may be taken by a single woman. If a woman is divorced or legally separated from her husband at the close of the taxable year — or if she is deserted during the entire taxable year — she is considered as single during the entire taxable year.

A married woman may claim the deduction, however she must file a joint return with her husband and the allowable expenditures must be reduced by the amount of the excess of their adjusted gross income over $6,000. If the woman's husband is mentally or physically incapable of self-support, the requirement of a joint return and of the reduction of claim, according to income in excess of $6,000, does not apply.

A single man may not claim the deduction unless he is a widower, or divorced or legally separated from his wife at the close of the taxable year. A married man may not claim the deduction unless his wife is incapacitated for at least 90 consecutive days. Also, the joint return requirement and the claim reduction for income in excess of $6,000 applies except as to expenses incurred while the wife is institutionalized if for at least 90 consecutive days (unless terminated by death).

INCT 920 Adoption expenses. Expenses arising from the adoption of one or more children are deductible up to a maximum of $450 per child to August 1, 1973 and $1,250 per child thereafter. The expenses are deductible if incurred and paid by the taxpayer provided the adoption is completed on or after May 10, 1969. Adoption expenses incurred and paid during two taxable years shall be claimed in the years paid, provided the total of all deductions claimed in the two years shall not exceed the maximum allowed per child.

A taxpayer claiming a deduction for adoption expenses shall include with his income tax return a statement showing the name and age of the adopted child, the date of adoption, the nature of, and amount of, any expense arising from the adoption. Adoption expenses include, for example, attorney's fees, court costs, amounts paid to adoption agencies, and any other necessary expenses arising from the adoption.

Food, clothing, lodging, and medical expenses incurred by the adopting parents for care of the child, are support items and do not qualify as adoption expenses. These items are considered, however, in determining the dependency credit on the income tax return. Also, medical expenses incurred and paid in behalf of the child are deductible along with other medical expenses of the taxpayer, provided the child qualifies as the taxpayer's dependent.

INCT 921 Real estate investment trusts. For taxable years beginning after December 31, 1970, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, and their shareholders, are taxed in the same manner under state law as they are taxed under federal law.

INCT 922 Deductions for farm expenses and losses are limited. For taxable years beginning on or after January 1, 1974, expenses and losses arising from a farm which are in excess of income and gains arising from a farm are deductible against non-farm income up to the amount of $15,000. If non-farm income exceeds $15,000 the amount of the maximum allowable farm loss ($15,000) which may be claimed in a current year is reduced by twice the amount of non-farm income in excess of $15,000. If, therefore, non-farm income is $22,500 or more, no farm loss may be claimed in the current year.

Any farm expenses or losses which are not allowed as a deduction in the taxable year are used as a three year deduction carryback and five year deduction carryover to previous and subsequent taxable years in chronological order. Current expenses and losses are utilized in the carryback and carryover years prior to application of deduction carrybacks or carryovers, provided that the combined or total amounts can be used as deductions subject to the same limitations as to non-farm income as are applied in current taxable years.

The following examples illustrate the computation of the amount of farm loss which is allowed as a deduction, and the amount of farm loss which is not allowed as a deduction but is added to the federal adjusted gross income figure and is then used as a deduction carryback and carryover.

EXAMPLE I

Federal adjusted gross income			**($8,000)**
Farm loss		**($16,000)**	
Non-farm income	**$ 8,000**		
Maximum farm loss (limited to non-farm income under $15,000)	**8,000**		
Excess	**-0-**		
Adjusted maximum loss		**$ 8,000**	
Farm loss to be added back ($16,000 — 8,000)			**$8,000**
Minnesota gross income			**-0-**
Farm loss available for carryback			**$8,000**

EXAMPLE II

Federal adjusted gross income			**$4,000**
Farm loss		**($14,000)**	
Non-farm income	**$18,000**		
Maximum farm loss	**15,000**		
Excess	**$ 3,000**		
Adjusted maximum loss ($15,000 — (3,000 x 2))		**9,000**	
Farm loss to be added back ($14,000 — 9,000)			**$5,000**
Minnesota gross income		**$ 9,000**	
Farm loss available for carryback			**$5,000**

EXAMPLE III

Federal adjusted gross income		**$ 8,000**	
Farm loss		**($ 9,000)**	
Non-farm income	**$17,000**		
Maximum loss	**15,000**		
Excess	**$ 2,000**		
Adjusted maximum loss ($15,000 — (2,000 x 2))		**11,000**	
Farm loss to be added back (Loss is less than adjusted maximum)			**-0-**
Minnesota gross income			**$8,000**

No carryback or carryforward.
Loss allowed in full in the current year.

INCT 923 Net operating loss — corporations.

A. The net operating loss for any taxable year is the excess of the deductions allowed by Minn. Stat. § 290.09 that are assignable to Minnesota over the gross income, with the modifications listed below.

B. The net operating loss deduction is the total of the net operating loss carrybacks and carryovers to a taxable year. The net operating loss deduction is applied to the corporation's taxable net income in the taxable year to which it is carried back or carried forward.

C. Taxable net income for any taxable year to which a net operating loss is carried means the taxpayer's net income assignable to this state, with the modifications listed below.

D. Modifications — In determining the net operating loss for any taxable year, and in determining the taxable net income for any year to which such loss is carried, the following modifications shall be made:

1. Deductions which are not attributable to the operation of a trade or business regularly carried on by the taxpayer are allowed only to the extent of the gross income, not derived from such trade or business, included in computing the taxpayer's taxable net income.

2. The amount of interest "exempt" under the provisions of Minn. Stat. § 290.08 shall be included in a corporation's gross income, used in computing taxable net income, decreased by the amount of interest paid or accrued to purchase or carry investments earning such interest.

3. No deduction is allowed with respect to losses connected with income producing activities if income from such activities would not be required to be either assignable to this state or included in computing the taxpayer's taxable net income.

4. A "net operating loss deduction" shall not be allowed.

5. Capital losses are deductible only to the extent of capital gains. The 50 percent deduction for net long term capital gains shall not be allowed.

6. Renegotiation of profits for a prior taxable year are not considered.

7. Federal income and excess profits taxes shall not be allowed.

INCT 924 Net operating loss carryback and carryover — corporations. A net operating loss shall be

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carried back to the third taxable year preceding the loss year and applied to that year's taxable net income. Any excess of net operating loss shall thereafter be carried, and applied in the same manner and in order, to the second preceding taxable year, the first preceding taxable year and the first through fifth succeeding taxable years.

INCT 925 Corporations doing business within and without Minnesota. Where a corporation does business both within and without Minnesota, and apportions its income under the provisions of Minn. Stat. § 290.19, the net operating loss deduction shall be allowed to the extent of the apportionment ratio of the loss year, or the year to which the loss is carried, whichever is smaller.

EXAMPLE: A company doing business both within and without Minnesota has a net loss in its operations for the year 1972 of $20,000. The 1972 apportionment ratio is 55 percent (to Minnesota).

Included in the $20,00 loss figure was a $2,000 excess of net long term capital gain over net short term capital loss, of which only $1,000 was added to income, due to the 50 percent long term capital gains deduction.

The company's "net operating loss" for the year 1972 is $10,450 computed as follows: $20,000 loss minus $1,000 (net long term capital gain reported at 100%) = $19,000 x 55 percent (apportionment ratio) = net operating loss of $10,450.

The 1972 "net operating loss: is a net operating loss deduction which can be carried back to 1969 unless the apportionment ratio (to Minnesota) is less for 1969 than for 1972. Assume that in the carryback year the apportionment ratio was 45 percent (to Minnesota). Since this ratio is less than in the loss year (55 percent in 1972), the net operating loss deduction is the 1972 loss of $19,000 x 45 percent, or $8,550.

Assume that in 1969 the company had taxable net income of $10,000 which included an excess of $2,000 net short term losses over net long term capital gain. The company's taxable net income for purposes of the net operating loss deduction is $10,000 + $2,000 (capital losses deductible only to extent of capital gains), = $12,000 x 45 percent (apportionment ratio) = taxable net income of $5,400.

Applying the $8,550 net operating loss deduction to the 1969 taxable net income of $5,400, there is no tax due for 1969, and the remaining $3,150 net operating loss deduction is available to be applied to the taxable year 1970.

INCT 926 Net operating loss — individuals. Prior to 1961 Minn. Stat. § 290.095 provided for the recognition of a "net operating loss" of individuals, and corporations, and provided a three year carryback and a five year carryover of the net operating loss deduction. The 1961 legislature amended Minn. Stat. § 290.095 by providing that the Minnesota net operating loss deduction would be available "only to corporate taxpayers", except that individuals would be allowed the deduction for tax years beginning before January 1, 1961.

Following the 1961 amendment, the "net operating loss' of corporations has been determined under Minn. Stat. § 290.095, and the "net operating loss" of individuals has been determined under Section 172 of the Internal Revenue Code, with modifications of income and loss items in accordance with the concept of income assignability under Minn. Stat. § 290.17-290.19 (inclusive). The 1967 legislature recognized the applicability of Section 172 to individuals when it added subd. 9 to Minn. Stat. § 290.095 with its refund provisions "in the case of an individual of an adjustment of 'federal adjusted gross income' because of the carryback under Section 172 of the Internal Revenue Code. . . ."

A. Determining a net operating loss (individuals). Under Section 172 of the Internal Revenue Code, the net operating loss is, simply, the excess of allowable deductions over gross income, with certain adjustments. This loss is computed the same as you compute taxable income, with adjustments. The following items must be subtracted from the negative income (loss) figure:

1. Any net operating loss carryback or carryforward figure from another taxable year

2. The 50 percent net long term capital gains figure

3. The excess of capital losses over capital gains

4. The excess of nonbusiness deductions over nonbusiness income. Dividends, interest, annuities, or income from passive investments are nonbusiness income. Salaries and rent are business income. Casualty and theft losses, whether of personal or business property, are treated as business losses.

5. The personal exemptions figure

6. The amount of any self-employed contributions to self-employment retirement plans.

B. Net Operating Loss — Minnesota Modifications

1. Losses assignable outside of Minnesota. Out-of-state losses are deducted to arrive at the Minnesota net operating loss figure. EXAMPLE: Taxpayer, a Minnesota resident, sustained a federal net operating loss of approximately $170,000. About $160,000 of these losses were from his business of leasing out-of-state real property (his losses from Minnesota real estate were about $10,000). Taxpayers' Minnesota net operating loss does not include his $160,000 loss from out-of-state real property since any income from such property would not have been assignable to Minnesota under

Minn. Stat. § 290.17. NOTE: The 1971 Minnesota Legislature provided in Minn. Stat. § 290.01, subd. 20 for a modification to federal adjusted gross income in the amount of "(6) Losses which do not arise from events or transactions which are assignable to Minnesota . . ." etc. This amendment was intended to clarify, not to change existing law.

2. Income assignable outside of Minnesota is excluded in determining the Minnesota net operating loss figure. EXAMPLE: John Smith lived in California until June 30, 1971. He was employed as a mechanical engineer at a salary of $2,000 per month. His earnings for the first six months totaled $12,000. On July 1, 1971 he moved to Minnesota and operated a coin operated laundromat. He lost $10,000 at this venture through his operations during the last six months of 1971. Assuming a federal taxable income of $2,000, his Minnesota net operating loss is $10,000, as his California earnings are excluded from Minnesota income.

The net operating loss can be carried back three years and carried forward five years under Section 172 of the Internal Revenue Code and applied against Minnesota taxable income.

EXAMPLE: Assume John Smith in the previous example had no Minnesota taxable income prior to 1971, and in 1972 he continued the laundromat business at a profit and his federal taxable income in 1972 was $15,000. The Minnesota 1971 net operating loss of $10,000 is not used in the years 1968, 1969, and 1970 (no Minnesota taaxble income), and is therefore carried forward to 1972.

C. Applying the net operating loss deduction. The net operating loss deduction is the total of the net operating loss carrybacks and carryovers to a tax year. Section 172(a), Internal Revenue Code. As previously illustrated, the federal deduction figure is modified so that it will reflect only Minnesota income and loss items in accordance with Minn. Stat. § 290.17-290.19 (inclusive).

If the net operating loss deduction were applied to the federal taxable income figure in the year to which carried, that year's taxable income would be adjusted by the additions of

1. The 50 percent net long term capital gains figure

2. The excess of capital losses over capital gains

3. The personal exemptions figure

For Minnesota purposes, the net operating loss deduction should be applied to Minnesota taxable income with the modifications in 1. and 2. above (no personal exemptions figure).

INCT 927 Tentative carryback adjustments.

A. In general. Any corporation which has a net operating loss under Minn. Stat. § 290.095, and any individual who has a net operating loss under Section 172 of the Internal Revenue Code, which loss is assignable to Minnesota, may file an application for a tentative carryback adjustment of the taxes for taxable years prior to the taxable year of the loss which are affected by the net operating loss carryback resulting from such loss.

B. Contents of Application. The application for tentative carryback adjustment shall be filed on Form 519C for corporations, and 519I for individuals. The application shall be filled out in accordance with the instructions on the form and all information required by the form must be furnished by the taxpayer.

An application for a tentative carryback adjustment does not constitute a claim for refund. If such application is disallowed by the Commissioner in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The filing of an application for a tentative carryback adjustment will not constitute the filing of a claim for refund within the meaning of Minn. Stat. § 290.50 for purposes of determining whether a claim for refund was filed prior to the expiration of the applicable period of limitation. The taxpayer, however, may file a claim for refund under Minn. Stat. § 290.50 at any time prior to the expiration of the applicable period of limitation, and may maintain a suit based on such claim if it is disallowed or if the Commissioner does not act on the claim within six months from the date it is filed. Such claim may be filed before, simultaneously with, or after the filing of an application for a tentative carryback adjustment. A claim for refund under Minn. Stat. § 290.50 filed after the filing of an application for a tentative carryback adjustment is not to be considered an amendment of such application. Such claim, however, in proper cases may constitute an amendment to a prior claim filed under Minn. Stat. § 290.50.

C. Time and Place for Filing Application. The application for a tentative carryback adjustment shall be filed on or after the date of the filing of the return for the taxable year of the net operating loss and shall be filed within the period of twelve months from the end

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of such taxable year. Any application filed prior to the date the return for the taxable year of the loss is filed shall be considered to have been filed on the date such return is filed. Application shall be filed with the Commissioner of Revenue, St. Paul, Minnesota.

INCT 928 Computation of tentative carryback adjustment.

A. Tax previously determined. The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss. Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, refunded, or otherwise repaid prior to such date. Any items as to which the Department of Revenue and the taxpayer are in disagreement at the time of filing of the application shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application.

B. Decrease attributable to carryback. The decrease in tax previously determined which is affected by the carryback or any related adjustments, is to be determined, except for such carryback and related adjustments, on the basis of the items which entered into the computation of such tax as previously determined; the tax previously determined being ascertained in the manner described in this regulation. In determining any such decrease, items shall be taken into account only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, refunded, or otherwise repaid, before the date of filing the application for a tenative carryback adjustment. If the Department of Revenue and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the decrease in tax previously determined that such item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, refund, or other repayment, before the date of filing the application. Thus, if the taxpayer claimed a deducation on its return of $50,000 for salaries paid to its officers, but the Commissioner asserts that such deduction should not exceed $20,000, and the Department of Revenue and the taxpayer have not agreed on the amount properly deductible before the date the application for a tentative carryback adjustment is filed, $50,000 shall be considered as the amount properly deductible, for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items, which are affected by the carryback must be adjusted to reflect such carryback.

INCT 929 Allowance of adjustments.

A. Time prescribed. The Commissioner shall act upon any application for a tentative carryback adjustment filed, under Minn. Stat. § 290.095, Subd. 7 within a period of 90 days from whichever of the following two dates is the later:

1. The date the application is filed; or

2. The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which the carryback results.

B. Examination. Within the 90-day period described in paragraph A. of the regulation, the Commissioner shall make to the extent he deems practicable in such period, an examination of the application to discover omissions and errors of computation. He shall determine within such period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and such examination. The Commissioner, however, may correct any errors of computation or omissions he may discover upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, he accordingly may correct any mathematical error appearing on the application and he may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing its net operating loss, the resulting carrybacks, or its net operating loss deduction. If the required modification has not been made by the taxpayer and the Commissioner has available the necessary information to make such modification within the 90-day period, he may in his discretion, make such modification. In determining such decrease, however, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because he believes that the taxpayer has claimed an excessive amount; likewise he will not include in gross income any amount not so included by the taxpayer, even though the Commissioner believes that such amount is subject to tax and properly should be included in gross income.

C. Disallowance in whole or in part. If the Commissioner finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, he may disallow such application in whole or in part without further action. If, however, he deems that any error of computation can be corrected by him within the 90-day period, he may do so and allow the application in whole or in part. The Commissioner's determination as to whether he can correct any error of computation within the 90-day period shall be conclusive. Similarly, his action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer in such case, however, may file a claim for credit or refund under Minn. Stat. § 290.50, and may maintain a suit based on such claim if it is disallowed or if the Commissioner does not act upon the claim within six months from the date it is filed.

D. Application of decrease.

1. Each decrease determined by the Commissioner in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount of tax may include one or more of the following:

a. An amount with respect to which the taxpayer is delinquent;

b. An amount the time for payment of which has been extended under Minn. Stat. § 290.45, Subd. 2 and which is due and payable on or after the date of the allowance of the decrease; and

2. In case the unpaid amount of tax includes more than one of such amounts, the Commissioner, in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in subparagraph 1. a., and b. in the order named. The upaid amount of tax against which a decrease may be applied under subparagraph 1. of this paragraph may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of tax for the taxable year of the net operating loss, which resulted in the carryback.

3. Any remainder of the decrease after such application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax or installment thereof then due from the taxpayer, and if not so credited, shall be refunded to the taxpayer within such 90-day period. For the purposes of refunding any such decrease or portion thereof, the overpayment of tax resulting from the carryback for purposes of this regulation shall be deemed not to have been made prior to the end of the taxable year, in which the net operating loss occurs.

INCT 930 Special period of limitations with respect to net operating loss carrybacks.

A.

1. If the claim for refund relates to an overpayment of income tax attributable to a net operating loss carryback, provided in Minn. Stat. § 290.095, Subd. 2, then in lieu of the period prescribed in Minn. Stat. § 290.50, the claim may be filed, or refund allowed, as prescribed in Minn. Stat. § 290.46 or 290.50 within either of the following two periods whichever is the later:

a. The period which ends with the expiration of the fifteenth day of the forty-sixth month (or the forty-fifth month in the case of a corporation) following the end of the taxable year of the net operating loss which resulted in the carryback; or

b. The period which ends with the expiration of the period prescribed in Minn. Stat. § 290.46 or 290.50 within which a claim for refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback.

2. In the case of a claim for refund involving a net operating loss carryback described in subparagraph 1. of this paragraph, the amount of the refund may exceed the portion of the tax paid within the period provided in Minn. Stat. § 290.50 to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on a net operating loss carryback described in subparagraph 1. of this paragraph but based also on other items, the refund cannot exceed the sum of the following:

a. The amount of the overpayment which is attributable to the net operating loss carryback, and

b. The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in Minn. Stat. § 290.50 or within the period provided in any other applicable provisions of law.

3. If the claim involves an overpayment based

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not only on a net operating loss carryback described in subparagraph 1. of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for refund is not filed, and if refund is not allowed, within the period prescribed in this paragraph, then refund may be allowed or made only if claim therefore is filed, or if such refund is allowed, within the period prescribed in Minn. Stat. § 290.46 or 290.50 subject to the provisions thereof limiting the amount of refund in the case of a claim filed, or if no claim was filed, in case of refund allowed, within such applicable period.

B. If the allowance of a refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law such refund may be allowed or made under the provisions of Minn. Stat. § 290.095, if a claim therefor is filed within the period therein provided and paragraph A. of this regulation for filing a claim for refund of an overpayment attributable to a carryback. Similarly, if the allowance of an application, or refund of a decrease in tax determined under Minn. Stat. § 290.095, is otherwise prevented by the operation of any law or rule of law, such application, or refund may be allowed or made if an application for a tentative carryback adjustment is filed within the period provided in Minn. Stat. § 290.095, Subd. 9. Thus, for example, even though the tax liability (not including the net operating loss deduction or the effect of such deduction) for a given taxable year has previously been litigated before the Minnesota Tax Court, refund or an overpayment may be allowed or made if claim for such refund is filed within the period provided in Minn. Stat. § 290.095, Subd. 9. In the case of a claim for refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Minnesota Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

INCT 931 Audit and review. The Commissioner in examining the books and records of the taxpayer relting to the income tax return for a taxable year, which except for the provisions of Minn. Stat. § 290.095, Subd. 9 would be outlawed by the normal limitation period, will limit such examination and consideration in accordance with the provisions of this regulation. The procedure outlined will be followed with respect to such returns in cases where either a claim for refund has been filed by the taxpayer or where an application for a tentative carryback adjustment has been filed. The Commissioner will make appropriate adjustments as a result of such examination up to the amount of the tentative adjustment or the amount of the carryback but will in no event assess additional taxes for the year of carryback.

In the event that such examination discloses that the amount refunded to the taxpayer pursuant to application under Minn. Stat. § 290.095, Subd. 7(a) was improper, the Commissioner shall issue his order assessing a tax which assessment shall in no event exceed the amount of the erroneous refund made for the year in question. Such assessment shall be made in accordance with the provisions of Minn. Stat. § 290.46, and the provisions of Minn. Stat. ch. 290, dealing with notice, appeal, and collection, applicable to Minn. Stat. § 290.46 assessments shall be equally applicable to assessments under this regulation.

INCT 932 Applicability. The provisions of Minn. Stat. § 290.095, Subd. 7(a) and (b), dealing with tentative carryback adjustments, are applicable only to situations where the year of the net operating loss in question begins after December 31, 1961.

The provisions of Minn. Stat. § 290.095, Subd. 9 extending the period within which a claim for refund may be made arising out of a net operating loss carryback adjustment and where the Commissioner may make adjustments relating to any such carryback are applicable only to situations where the year of the net operating loss commences after December 31, 1961.

Chapter Ten: Deductions not Allowed

INCT 1000 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 Minn. Stat. § 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 Minn. Stat. § 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 INCT 902 and 916.

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 Minn. Stat. § 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 Minn. Stat. § 290.09, Subd. 4 and INCT 905.)

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 non-business 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.

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.

Y. For treatment of amounts paid into pension or retirement funds, see Reg. INCT 1004.

INCT 1001 Capital expenditures.

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 Minn. Stat. § 290.09, Subd. 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

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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 Minn. Stat. § 290.09, Subd. 18.

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 Minn. Stat. § 290.09, Subd. 19.

R. Other than as specified in preceding regulations, 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.

INCT 1002 Losses from sales between members of families and between individuals and corporations. Under Minn. Stat. § 290.10(6) no losses are deductible from gross income unless the taxpayer shows to the satisfaction of the Commissioner that the sale or exchange was bona fide and for a fair and adequate consideration.

Under no circumstances will losses of this nature be allowed on sales or exchanges for less than the fair market value of the property on the date of the transaction.

INCT 1003 Unpaid expenses and interest. The application of Minn. Stat. § 290.10(7) may be illustrated by the following example:

A is the holder and owner of an interest-bearing note executed by the M Corporation all of the stock of which is owned by him. A and the M Corporation make their income returns on the basis of a calendar year but the M Corporation makes its returns on the accrual basis and A makes his returns on the cash receipts and disbursements basis. The M Corporation does not pay any interest on such note during the calendar year 1969 or within two and one-half months after the close thereof, but claims a deduction for the year 1969 with respect to the interest accruing on the note in that year. A, being on the cash receipts and disbursements basis, does not include such interest in his return for the year 1969. By the application of Minn. Stat. § 290.10(7) no deduction for such interest is allowable in computing the net income of the M Corporation for the year 1969. The provisions of Minn. Stat. § 290.10(7) do not otherwise affect the general rules governing the allowance of deductions under the accrual basis. Hence, in the event the M Corporation should pay such interest after March 15, 1970, no deduction therefore would be allowable in computing its net income for the year in which the payment was made.

However, the provisions of Minn. Stat. § 290.10(7) are applicable only to those taxpayers who come within the purview of Minn. Stat. § 290.10(6).

Accordingly, the provisions of Minn. Stat. § 290.10 (7) are applicable only if the following three conditions precedent are present:

A. If such expenses or interest are not paid within the taxable year or within two and one-half months after the close thereof; and

B. If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

C. If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under Minn. Stat. § 290.10 (6).

INC 1004 Social security contributions and federal self-employment contributions. An employee may not claim a deduction for his social security (F.I.C.A.) contribution under Section 3101 of the Internal Revenue Act of 1954, as amended, nor for his contributions under the federal railroad retirement act, nor for his payments for Minnesota or federal public employee retirement plans.

A self-employed person may not deduct that portion of the federal self-employment tax on self-employment income which would have been imposed as social security (F.I.C.A.) tax if the same income had been wages from employment. EXAMPLE: Assume a taxpayer had self-employment earned income of $10,000 in 1971, and no income as an employee. An employee's (F.I.C.A.) tax for 1971 was at 5.2 percent and the self-employment tax was at 7.5 percent. The taxes were imposed on earnings up to a maximum of $7,800. The maximum self-employment tax deduction that is allowable is therefore 2.3% of $7,800 or a maximum total of $179.40 for the year 1971.

A nonresident of Minnesota with self-employment income from personal services performed solely outside of Minnesota could not deduct any amount of self-employment tax since the tax would then be on income not assignable to Minnesota. See Regulation INCT 1005.

If an individual's self-employment income is only partially assignable to Minnesota, only the portion of the self-employment tax that exceeds social security tax on a like amount of wages is deductible. The allowable deduction for self-employment tax will be computed by finding the ratio that Minnesota self-employment income bears to the total self-employment income. This ratio is then applied to the amount that self-employment tax exceeds social security tax on a like amount of income to determine the deduction.

Example: Minnesota self-employment income	$ 4,000.00
Total self-employment income	$10,000.00
Ratio of Minnesota income to total	40%
1971 self-employment tax on $7,800	$ 585.00
1971 social security tax on $7,800	405.60
Excess of self-employment tax over social security tax	179.40
Allow 40% of $179.40 as a deduction	$ 71.76

INCT 1005 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 Minn. Stat. § 290.10(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 Minn. Stat. § 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 Minn. Stat. § 290.17 (allocation of gross income to State), and Minn. Stat. § 290.18 (computation of taxable net income and adjusted gross income).

A. Federal taxes paid are not deductible if:

1. they are imposed on a class of income not included in the measure of the tax under the Minnesota Income Tax Act — (EXAMPLE: Interest from federal series E bonds),

2. or if they are imposed on income not assignable to this state — (EXAMPLE: Rental income from real estate located outside of Minnesota).

B. If a 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 such Federal income taxes are paid out of joint bank accounts or joint funds, the tax shall be considered as having ben paid by either spouse. Amounts withheld for payment of Federal income taxes shall be considered payments made by the spouse from whom the amount was withheld.

Corporations and national and state banks may not deduct federal income taxes imposed on income received after July 1, 1971. See Minn. Stat. § 290.18.

INCT 1006 Federal income taxes and expenses on excluded income. The federal income tax on a class of income, of which a specific dollar amount of income is excluded from Minnesota income tax, is not an allowable deduction. This relates to Minn. Stat. § 290.65 under which up to $5,000 of annual income from ser-

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vices in the armed forces is excluded from state income tax. A proportionate reduction in the federal income tax deduction under Minn. Stat. § 290.17 must be made.

As an example: An individual is in military service having Minnesota as his principal place of residence and he receives for services performed for such military service an amount of $10,000 with all services performed outside of Minnesota. His exclusion for Minnesota income tax purposes would be $5,000. His deduction for Federal income tax paid for the current year in such current year would be limited to 50 percent of the total Federal income tax paid for the current year in such current year.

For taxable years beginning after December 31, 1972 expenses attributable to excluded income are not allowable in any amount.

INCT 1007 Taxes and carrying charges chargeable to capital account and treated as capital items.

A. In general.

1. The taxpayer may elect, as provided in paragraph B. of this regulation, to treat the items enumerated in this subparagraph which are otherwise expressly deductible under the provisions of Minn. Stat. ch. 290 as chargeable to capital account either as a component of original cost or other basis, for the purposes of Minn. Stat. § 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.

e. The sole effect of Minn. Stat. § 290.10(11) is to permit the items enumerated in subparagraph 1. of this paragraph to be chargeable to capital account notwithstanding that such items are otherwise expressly deductible under the provisions of Minn. Stat. ch. 290. An item not otherwise deductible may not be capitalized under Minn. Stat. § 290.10(11).

2. On the absence of a provision in this regulation for treating a given item as a capital item, this regulation has no effect on the treatment otherwise accorded such item. Thus, items which are otherwise deductible are deductible notwithstanding the provisions of this regulation, 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 regulation. Nor is the absence of a provision in this regulation 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 Minn. Stat. ch. 290, or of the regulations thereunder, to elect to capitalize or to deduct a given item.

B. Election to charge taxes and carrying charges to capital account.

1. If for any taxable year there are two or more items of the type described in paragraph A.1. of this regulation, which relate 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 regulation, a "project" means, in the case of items described in paragraph A.1.b. of this regulation, a particular development of, or construction of an improvement to, real property, and in the case of times described in paragraph A.1.c. of this regulation, the transportation and installation of machinery or other fixed assets.

2.

a. An election with respect to an item described in paragraph A.1.a. of this regulation is effective only for the year for which it is made.

b. An election with respect to an item described in —

(1) Paragraph A.1.b. of this regulation is effective until the development or construction work described in that paragraph has been completed;

(2) Paragraph A.1.c. of this regulation is effective until the later of either the date of installation of the property described in that paragraph, or the date when such property is first put into use by the taxpayer;

(3) Paragraph A.1.d. of this regulation is effective as determined by the Commissioner.

Thus, an item chargeable to capital account under this regulation 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.

3. If the taxpayer elects to capitalize an item or items under this regulation, 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.

Chapter Eleven: Disposition of Property

INCT 1100 Measurement of gain or loss. The difference between the amount realized from the sale or other disposition of property and the basis provided in Minn. Stat. § 290.14 and 290.15 represents the gain or loss on such transactions except that said basis shall be adjusted as provided in Minn. Stat. § 290.12, subd. 2, and M.S.A.R. INCT 1101.

INCT 1101 Adjustments.

A. In general. The cost or other basis shall be properly adjusted for any expenditure, receipt, loss, or other item, properly chargeable to the capital acount, including the cost of improvements and betterments made to the property. Carrying charges, such as taxes and interest, are not properly chargeable to the capital account even though they have not been taken as a deduction by the taxpayer and even though they were incurred on unimproved and unproductive real property.

The cost or other basis must also be decreased by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization, and depletion allowed or allowable under the Minnesota Income Tax Act. Such amount shall not be less than the amount allowable. A taxpayer is not permitted to take advantage in a later year of his prior failure to take any depreciation allowance or of his action in taking an allowance plainly inadequate under the facts known at the time. In addition, if the property was acquired before January 1, 1933, the basis (if other than the fair market value as of January 1, 1933) shall be diminished by the depreciation actually sustained before January 1, 1933. For example, if a taxpayer sells non-income producing property such as his residence which has not been subject to the depreciation allowance under the Minnesota Income Tax Act, the basis need not be diminished because of the depreciation sustained after January 1, 1933. However, the basis must be diminished for depreciation actually sustained prior to January 1, 1933.

If a person or organization was not subject to taxation under the Minnesota Income Tax Act during some period after December 31, 1932, but subsequently became subject to taxation, such person or organization must adjust the cost or other basis of its property for the exhaustion, wear and tear, obsolescence, amortization, and depletion actually sustained during the period it was not subject to taxation. This requirement applies to all taxable years beginning after December 31, 1954. If such person or organization acquired property prior to January 1, 1933, the basis of such property (if the basis is other than fair market value as of January 1, 1933) must also be adjusted for depreciation, etc., actually sustained during the period beginning on the date of acquisition of the property and ending December 31, 1932.

In the case of the stock of a subsidiary company, the basis thereof must be adjusted for the amount of the subsidiary company's loss for the years in which consolidated returns were made.

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B. Period for which adjustments are applicable. If, in accordance with the provisions of Minn. Stat. § 290.14 and 290.15, the basis used is the cost of the property, then such basis must be adjusted as provided in Minn. Stat. § 290.12, Subd. 2, for the period from the date of purchase (by the taxpayer or otherwise) to the date of sale or other disposition.

However, if the basis used is the fair market value of the property as of a certain date (as provided in Minn. Stat. § 290.14 and 290.15), then such adjustments must be made only from the date for which the fair market value was determined to the date of sale or other disposition.

C. Adjustments where property is acquired by exchange and wash sale transactions. In the case of the sale or other disposition of property acquired in an exchange of the kind specified in Minn. Stat. 290.13, Subd. 1, the adjustments to the basis as provided in Minn. Stat. § 290.12, Subd. 2, must be made to the extent to which the taxpayer would be required to make them were he selling or otherwise disposing of the property exchanged in any such transaction.

D. Gain realized in cases where property is not sold or disposed of. Even though property is not sold or otherwise disposed of gain (includible in gross income under Minn. Stat. § 290.01, Subd. 20) is realized if the sum of all the amounts received which are required by this regulation to be applied against the basis of the property exceeds such basis. Such amounts must be included in gross income to the extent that the basis is exceeded in the year received.

INCT 1102 Amount realized. When property is disposed of for cash and other property, the fair market value of such other property at the date of the transaction shall be added to the money received, in order to determine the total amount realized from the transaction.

INCT 1103 Gain or loss. Federal law controls for all requirements regarding recognition and non-recognition of gains and losses for individuals, estates, and trusts. In the case of property having a different basis, but falling within the classification of non-recognition for Federal income tax purposes, the resulting necessary modifications would be made to the basis of the new property.

EXAMPLE: A machine purchased by an individual in 1956 for $20,000 with a 20 year life was depreciated for Federal tax purposes by utilizing double declining balance and depreciated for Minnesota tax purposes on the straight line method up to 1961. The result was that depreciation claimed for Federal tax purposes up to 1961 exceeded that claimed for Minnesota by $3,190. In 1966 the taxpayer switched to straight line for Federal allowing for estimated salvage value. In 1970 the taxpayer traded this machine in for a similar machine with a listed cost of $35,000 with allowance granted for trade-in of $18,000. $17,000 was paid in cash. The remaining basis for Federal was $4,573.

The resulting basis of the new machine for Federal would be the $17,000 plus the $4,573 remaining basis in the machine traded in for adjusted basis in the new machine of $21,573. For Minnesota purposes we would increase the basis to reflect the $3,190 additional depreciation claimed on the Federal return. So the resulting basis of the new machine for Minnesota would be $21,573 plus $3,190 or $24,763 Minnesota basis.

INCT 1104 Basis for depreciation. Minn. Stat. § 290.16 provides that the basis upon which exhaustion, wear, tear, obsolescence or depreciation are to be allowed in respect of any property shall be the same as provided in Minn. Stat. § 290.14 and 290.15 for the purpose of computing the loss or gain on the sale or other disposition of property. However, if depreciation is computed and allowed on the basis of fair market value as of January 1, 1933, and it later appears when the asset is sold that cost must be used as the loss or gain basis, adjustments must then be made for excessive depreciation in prior years in the amount by which the depreciation that was allowed exceeds the depreciation allowable when computed on the basis of cost.

INCT 1105 Capital gains and losses — individuals. Minnesota gross income for individuals means federal "adjusted gross income," except as modified in Minn. Stat. § 290.01, subd. 20 and except as is otherwise provided in Minn. Stat. ch. 290. The classifications of capital gains and capital losses and the treatment of such gains and losses in determining federal adjusted gross income is controlled by the provisions of the Internal Revenue Code of 1954, as amended. The federal income figure must be modified, however, in respect to gains or losses from events or transactions which are not assignable to Minnesota. See Minn. Stat. § 290.01, subd. 20(a)(6).

INCT 1106 Net capital gains deduction — corporations. If the net long-term capital gain exceeds the net short-term capital loss, the corporation shall deduct 50 percent of the excess amount from gross income.

INCT 1107 Capital losses limited — corporations. For taxable years beginning on or after December 31, 1956, and before January 1, 1971, capital losses are allowed as a deduction in the loss year to corporations to the extent of capital gains, plus the lesser of $1,000 or the net income of the corporation (net income is computed without regard to gains or losses from sales or exchanges of capital assets).

For taxable years beginning on or after January 1, 1971, capital losses are allowed as a deduction to corporations in the loss year only to the extent of capital gains.

The balance of capital losses not deducted in the loss year is carried back and carried forward as provided in INCT 1108.

INCT 1108 Net capital loss carryback and carryover — corporations. For taxable years before January 1, 1971, the amount of any excess capital loss in the loss year is a carryover short term capital loss deduction in the five succeeding taxable years, in order. The excess capital loss is deductible in the carryover year to the extent of that year's "net capital gain," which is defined to mean the excess of capital gains, plus net income of taxpayer or $1,000, whichever is smaller, over capital gains, plus net income of taxpayer or $1,000, whichever is smaller, over capital losses (net income is computed without regard to gains or losses from sales or exchanges of capital assets). For taxable years beginning after December 31, 1972 the term "net capital gain" means only the excess of capital gains over capital losses. Any excess capital loss not utilized in the carryover year, due to the above limitations, is carried over to the following taxable year and applied against "net capital gain" in that year. Carryover continues, if necessary, to the fifth taxable year following the loss year, after which no carryover is permitted.

For taxable years beginning on or after January 1, 1971, the amount of any excess capital loss in the loss year is a carryback short-term capital loss deduction in the three preceding taxable years, and thereafter, if necessary, a carryover short-term capital loss deduction to the five succeeding taxable years. The excess capital loss is deductible in each year to the extent of that year's "net capital gain," which is defined to mean the excess of capital gains, plus net income of the corporation or $1,000, whichever is smaller, over capital losses (net income is computed without regard to gains or losses from sales or exchanges of capital assets). For taxable years beginning after December 31, 1972 the term "net capital gain" means only the excess of capital gains over capital losses.

A capital loss carryback may not be used to create or increase a net operating loss in the year to which it is carried. If there are capital gains in the carryback years that cannot be offset because of this provision, no adjustment to the amount of the capital loss carryback is required because of them.

INCT 1109 Gains and losses from involuntary conversions and from sale or exchange of certain property used in trade or business.

A. In general. The recognized gains and losses described in subdivisions 1. and 2. of this paragraph shall be treated as gains and losses from the sale or exchange of capital assets held for more than six months if the aggregate of such gains exceeds the aggregate of such losses. If the aggregate of such gains does not exceed the aggregate of such losses, such gains and losses shall not be treated as gains and losses from the sale or exchange of capital assets. The gains and losses referred to in this paragraph are the following:

1. Gains and losses from the sale exchange or involuntary conversion of "property used in the trade or business," as that term is defined in paragraph B. of this regulation, and

2. Gains and losses from the involuntary conversion of capital assets held for more than six months.

B. Property used in the trade or business. —

1. Defined. The term "property used in the trade or business" means:

a. Property used in the trade or business of a character which is subject to the allowance for depreciation provided in Minn. Stat. § 290.09, Subd. 7, and which has been held for more than six months;

b. Real property used in the trade or business, and which has been held for more than six months, and which is not

(1) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or

(2) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

c. Livestock, regardless of age held by the taxpayer for draft, breeding or dairy purposes, and held by him for twelve months or more from the date of acquisition (but see paragraph B.2. of this regulation).

2. The following types of property do not come within the term "property used in the trade or business":

a. Property held for less than six months regardless of whether or not used in a trade or business;

b. Inventory property;

c. Property held primarily for sale in the ordinary course of a trade or business;

d. Poultry (but see paragraph B.2. of this regulation);

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e. Property which is of the character subject to the allowance for depreciation, and which has been held for more than six months, but which has not been used in the trade or business.

3. Livestock and poultry. If livestock is sold, exchanged, or involuntarily converted, such livestock, other than poultry, qualifies as "property used in the trade or business" if it was

a. held by the taxpayer for draft, breeding, or dairy purposes, and

b. held by the taxpayer for twelve months or more from the date of acquisition.

Poultry sold, exchanged, or involuntarily converted does not qualify as "property used in the trade or business".

C. Involuntary conversion. The "involuntary conversion" of property is the conversion of such property into money or other property as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof. Losses upon the destruction in whole or in part, theft or seizure, requisition or condemnation of property are treated as losses upon an involuntary conversion whether or not there was a conversion of the property into money or other property. For example, if a capital asset held for more than six months, with an adjusted basis of $400, is stolen, and the loss from this theft is not compensated for by insurance or otherwise, the $400 loss is included in the computations under Minn. Stat. § 290.16, Subd. 9.

D. Computation. In determining whether the gains described in paragraph (a) of this regulation exceed the losses described therein, such gains and losses are taken into account in full, that is, 100 percent of such gains and losses is taken into account. The provisions of Minn. Stat. § 290.16, Subd. 5 limiting the deduction of capital losses are not applicable to exclude any losses from the computations under Minn. Stat. § 290.16, Subd. 9.

The following is an illustration of the computation of the excess of gains over losses:

	GAINS	LOSSES
Gain on sale of machinery used in a trade or business held for more than six months	$2,000.00	
Gain on building used in a trade or business held for more than six months. . . .	6,000.00	
Gain on land used in a trade or business held for more than six months	1,500.00	
Loss on a damaged truck used in a trade or business held for more than six months. .		$ 500.00
Fire loss on a warehouse used in a trade or business held for more than six months. .		1,000.00
Theft loss of a diamond ring held for more than six months		150.00
Storm damage on personal residence held for more than six months.		2,000.00
	$9,500.00	$3,650.00

Excess of gains over losses, $5,850.00.

INCT 1110 Gains and losses from short sales. General.

A. For income tax purposes a short sale is not deemed to be consummated until delivery of property to close the short sale. Whether the recognized gain or loss from a short sale is capital gain or loss or ordinary gain or loss depends upon whether the property so delivered constitutes a capital asset in the hands of the taxpayer.

B. Thus, if a dealer in securities makes a short sale of X Corporation stock, ordinary gain or loss results on closing of the short sale if the stock used to close the short sale was stock which he held primarily for sale to customers in the ordinary course of his trade or business. If the stock used to close the short sale was a capital asset in his hands, or if the taxpayer in this example was not a dealer, a capital gain or loss would result.

C. Generally, the period for which a taxpayer holds property delivered to close a short sale determines whether long-term or short-term capital gain or loss results.

D. Thus, if a taxpayer makes a short sale of share of stock and covers the short sale by purchasing and delivering shares which he held for not more than six months, the recognized gain or loss would be considered short-term capital gain or loss. If the short sale is made through a broker and the broker borrows property to make a delivery, the short sale is not deemed to be consummated until the obligation of the seller created by the short sale is finally discharged by delivery of property to the broker to replace the property borrowed by the broker.

Chapter Twelve: Assignability of Income and Deductions

INCT 1200 Compensation for labor or personal services.

A. If the taxpayer is a resident of Minnesota, all of his income from his labor or personal or professional services, whether or not performed within Minnesota, is subject to Minnesota tax.

If a Minnesota resident is a partner in a firm engaged in a business consisting principally of the performance of personal or professional services, his entire distributive share of the partnership income is subject to Minnesota income tax.

B. A nonresident of Minnesota is subject to Minnesota tax on his income to the extent it represents compensation from the performance of labor or personal or professional services within Minnesota. A nonresident partner in a firm engaged in a business consisting principally of the performance of personal or professional services is subject to Minneosta income tax on that portion of his distributive share of income which is derived from services performed within the state of Minnesota.

INCT 1201 Income from property.

A. 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 prinicipally 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 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 Minn. Stat. § 290.19.

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 has 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 proprty 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.

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.

B. Income from tangible property. Income or gains from intangible personal property is ordinarily assigned to the domicile of the recipient. Intangible personal property includes stocks, bonds, mortgages, notes, accounts receivable, patents, and copyrights.

Income or gains from intangible personal property held in trust is assigned to Minnesota, if the recipient of such income is domiciled in Minnesota and if such income or gains would be taxable to such recipient under Minn. Stat. § 290.22; or if the grantor of such trust is domiciled within Minnesota and such income or gains would be taxable to such grantor under Minn. Stat. § 290.28 or 290.29.

Any profit from the sale of real estate, or of an interest in real estate not used in a trade or business, is assigned to the state in which the property is located. If a Minnesota resident sells real property located outside of Minnesota to a purchaser on a mortgage or a contract for deed, any interest received on the debt is taxable to the Minnesota seller as income from an intangible.

If a business consists principally of the holding of intangible property, and the collection of the income and gains from such property, and the recipient is domiciled within Minnesota, such income is subject to Minnesota income tax. In other cases, income from a trade or business, including income from intangibles employed in the business, shall be apportioned to Minnesota in accordance with the provisions of Minn. Stat. § 290.19. Intangible property is employed in a business if the business entity owning the intangible property holds it as a means of furthering the business operation

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of which a part is located within the territorial confines of the state of Minnesota.

C. Income from a trade or business. The entire income from a trade or business which is carried on partly within and partly without this State, other than a business which consists principally of the performance of personal or professional services, shall be apportioned as provided in Minn. Stat. §290.19. A trade or business located in this State is carried on partly within and without this State if it sells tangible personal property which is delivered or shipped to a purchaser located outside this State. Where a business operation conducted in Minnesota is owned by a business entity which carries on business activity outside of the state different in kind from that conducted within this state, and such other business is conducted entirely outside the state, it will be presumed that the two business operations are unitary in nature, interrelated, connected and interdependent unless it can be shown to the contrary.

Income derived from the conduct of construction projects, either by corporation, individuals in their individual capacity or as a partnership, is assignable to this State provided the project has a situs within this State.

INCT 1202 Deductions allowable in computing taxable net income. In computing taxable net income (except in so far as Minn. Stat. § 290.19 is applicable) the extent to which deductions permitted by Minn. Stat. § 290.09 will be allowed shall be determined as follows:

A. Business expenses.

1. If the deductions permitted by Minn. Stat. § 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.

2. Minn. Stat. § 290.09 permits some deductions which are not 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 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.

B. Non-business expenses. There are some deductions ordinarily allowable under the provisions of Minn. Stat. § 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, non-business interest, non-business losses and non-business bad debts. Such non-business 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 this is in the case of taxes of the kind deductible under Minn. Stat. § 290.09, Subd. 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.

C. Gross income defined. The term "gross income", as used in Minn. Stat. § 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.

D. 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 rules shall apply:

1. Where 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.

2. 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 as-

sessed, allowable as a deduction, shall be determined in accordance with the provisions of paragraph 1.

For the purpose of computing the portion of Federal Income and Excess 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.

3. 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 Minn. Stat. § 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.

4. 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 where 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.

E. Application of Minn. Stat. § 290.18, Subd. 1(2). The provisions of Minn. Stat. § 290.18, Subd. 1(2) apply to both resident and non-resident 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.

F. Corporations and national and state banks are not allowed a deduction for federal income taxes attributable to periods after July 1, 1971.

INCT 1203 Apportionment of net income of business conducted partly within Minnesota.

A. Applicability of Minn. Stat. § 290.19. The formula prescribed by the provisions of Minn. Stat. § 290.19 shall be applied to the apportionable net income of a trade or business where the business carried on within this State is an integral part of a business carried on both within and without this State.

B. Apportionment of net income under Minn. Stat. § 290.19, Subd. 1(1).

If the business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores, or of the manufacture within or without Minnesota of personal property and sale of said property within and without Minnesota the formula shall be as follows:

$$\frac{\text{Minn. Sales}}{\text{Total Sales}} + \frac{\text{Minn. Payroll}}{\text{Total Payroll}} + \frac{\text{Minn. Tangible Prop.}}{\text{Total Tangible Prop.}} \div 3 = \%\text{ to Minn.}$$

Using hypothetical percentages we secure a per cent 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	160%/3		
Percent to Minnesota	53⅓%		

The following alternative formula may be employed if a lesser percentage to Minneota results by its use:

$$70\%\text{ of }\frac{\text{Minn. Sales}}{\text{Total Sales}} + 15\%\text{ of }\frac{\text{Minn. Payroll}}{\text{Total Payroll}} + 15\%\text{ of }\frac{\text{Minn. Tang. Prop.}}{\text{Total Tang. Prop.}} = \%\text{ to Minn.}$$

An illustration of the weighting of the factors in the alternative formula appears thus:

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

C. Apportionment of net income under Minn. Stat. § 290.19, Subd. 1(2).

If the business does not consist of the manufacture within or without Minnesota and the 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

a. tangible property,

b. payroll and

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c. sales, gross earnings or receipts, or on the basis of the percentage obtained by taking the weighted average of these three factors (15 per cent of the property percentage, 15 per cent of payroll percentage and 70 per cent of the sales, gross earnings or receipts percentage), whichever is the lesser. The methods prescribed in this paragraph are presumed to properly reflect the taxable net income assignable to this State.

2. The single factor of sales, gross earnings or receipts may be used only if

a. 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

b. 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 an integral part of a 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.

Those taxpayers who apportion a part of their income to Minnesota are required to complete Schedules T and U and attach them to their returns when filed.

D. Definition of terms.

1. Manufacture. 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.

In order for a business to consist of the manufacture in Minnesota of personal property within the purview of Minn. Stat. § 290.19, Subd. 1(1), the operations of "manufacture" must occur within the geographical territory of this State.

2. 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 producing income subject to apportionment by formula. Tangible property from which income is derived which is to be separately allocated under Minn. Stat. § 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 value of tangible property to be used in the apportionment fraction shall be the cost or other allowable income tax basis adjusted for allowable depreciation. The valuations of property both within and without Minnesota shall be the averages during the year and must be on a commensurate basis.

3. 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.

4. Sales of tangible personal property are made within this State:

a. If the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

b. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in this State. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

c. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in this State is property "delivered or shipped to a purchaser within this State."

d. The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivered to or has the property shipped to the ultimate recipient within this State.

Example: A taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is "in this state."

e. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state.

Example: The taxpayer, a produce grower in state A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in this state in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to this state.

INCT 1204 Petition for application of other than prescribed apportionment method. The method for determining net income allocable to Minnesota set forth in Minn. Stat. § 290.19, subd. 1 shall be the exclusive method whenever the taxpayer's business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores.

The general rule is that the specific statutory methods prescribed in Minn. Stat. § 290.19 shall be employed in the determination of net income allocable to Minnesota. Any taxpayer feeling aggrieved by the use of a method prescribed by Minn. Stat. § 290.19 may petition the Commissioner of Revenue for determination of taxable net income on some other basis, including separate accounting. The methods prescribed by Minn. Stat. § 290.19, subd. 1 are the only ones permitted in copper-nickel activities, as noted above.

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,

G. a summary statement of the facts upon which the taxpayer relies to sustain his view that the application of the methods prescribed by Minn. Stat. § 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 Minn. Stat. § 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 Minn. Stat. § 290.19 and attaches to the return a statement setting forth the reasons for the use of such other method.

Chapter Thirteen: Credits against Income

INCT 1300 Corporations. A credit of $500.00 is allowed in the case of each corporation. This credit is deductible in full even though the corporation is reporting for a fractional part of a year. (See Minn. Stat. § 290.32 for computation of tax for less than a full year.)

INCT 1301 Contributions and gifts.

A. A deduction is allowable, not to exceed in the aggregate 20% of the individual taxpayer's Minnesota gross income, for contributions and gifts:

1. To or for the use of the State of Minnesota, or any of its political subdivisions, for exclusively public purposes.

2. To or for the use of the United States of America for exclusively public purposes and to or for the use of any community chest, corporation, trust, fund, association or foundation organized and operated exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

If the donation is to the United States for exclusively public purposes, or to an organization described above, but which does not carry on substantially all its activities within Minnesota, a deduction is allowable but the deduction is limited to a proportionate amount of the donations, subject to the percentage limitations according to the ratio of Minnesota taxable net income

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to total taxable net income before the deduction for contributions.

3. To a fraternal society, order, or association, operating under the lodge system, located and carrying on substantially all of their activities within Minnesota, if the donation is for purposes set forth in 2. above, or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are located within the State of Minnesota and no part of their net income inures to the benefit of any private shareholder or individual, or to an employee stock ownership trust as defined in Minn. Stat. § 290.01, subd. 25. Where the beneficiaries of a stock ownership trust include the transferor, his spouse, children, grandchildren, parents, siblings or their children, the amount of the deduction shall be reduced by the product of multiplying said amount by their percentage interest in the trust.

4. To a political party as defined in Minn. Stat. § 200.02, or to a political candidate, as defined in Minn. Stat. § 211.01, or to a political cause when sponsored by any party or association or committee, as defined in Minn. Stat. § 211.01, in a maximum amount not to exceed the following:

a. contributions by individual natural persons — $100

b. contributions made by a national committeeman, national committeewoman, state chairman or state chairwoman of a political party, as defined in Minn. Stat. § 200.02 — $1,000

c. contributions made by a congressional district committeeman or committeewoman of a political party, as defined in Minn. Stat. § 200.02 — $350

d. contributions made by a county chairman or a county chairwoman of a political party, as defined in Minn. Stat. § 200.02 — $150

B. An additional deduction for donations to organizations listed above in A.1. and 2. is allowable, not exceeding in the aggregate 10% of the individual taxpayer's Minnesota gross income.

C. In the case of a corporation, the total credit against the taxable net income for contributions and gifts shall not exceed 15 percent of the taxpayer's taxable net income less the credits allowable under Minn. Stat. § 290.21, other than credits for contributions or gifts.

INCT 1302 Dividend credit for corporations.

NOTE: The dividend credit for corporations is allowed only with respect to dividends that are included in the corporation's Minnesota Taxable net income for the taxable year.

Corporate taxpayers are entitled to a credit of 85% of dividends received from another corporation when the corporate stock with respect to which dividends are paid does not constitute the stock in trade of the taxpayer or would not be included in the inventory of the taxpayer, or does not constitute property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or when the trade or business of the taxpayer does not consist principally of the holding of the stocks and the collection of the income and gains therefrom.

In those cases where a taxpayer is entitled to a credit of 85% of dividends received from another corporation, the following rules with respect to the remaining 15% of the dividends shall apply:

The term "dividend credit" as used hereafter in this regulation shall mean the credit applicable to the remaining 15% of the dividends only.

A dividend credit is allowable to a corporation only in the event that the recipient corporation owns 80 percent or more of all the voting stock of the corporation paying the dividend. In such an event, the amount of the dividend that can be credited against taxable net income is the whole thereof, if the dividend was paid out of corporate income earned wholly from income producing business or activities carried on within this State.

The term "income" includes any income whether or not includible in computing "net income" and "taxable net income" under the Act. The term "business" means in this clause business in an economic sense.

If the income out of which the dividends was declared was derived from business done within and without this State, the amount of dividend credit allowable is determined by applying the ratio which the Minnesota taxable net income for the taxable year preceding that of the dividend distribution bears to the entire corporate net income for such year.

The terms "taxable net income" and "net income" as used in this paragraph, refer to those terms as defined by other provisions of the Act. It will be necessary, before applying this allocation formula, to establish that the dividends are from income derived from business activities carried on partly within and without this State — this burden being on the taxpayer.

Example 1. The A Corporation owns 60% of the voting stock of the B Corporation. No dividend credit is allowable to the A Corporation with respect to any dividends received from the B Corporation.

Example 2. The T Corporation owns 81% of the voting stock of the L Corporation which operates wholly within Minnesota. The T Corporation is allowed 100% dividend credit with respect to dividends received from the L Corporation.

Example 3. The Y Corporation owns 80% of the voting stock of the Z Corporation which operates within and without the state. Assume that the percentage of the Z Corporation's Minnesota taxable net income to its total net income for the preceding taxable year was 40%. The Y Corporation is, in that event, allowed a dividend credit equal to 40% of the dividends received from the Z Corporation.

In all other cases no credit is permitted by law except as otherwise provided in this regulation.

Any taxpayer claiming the credit of 85% of the dividends received from another corporation and any portion of the remaining 15% of the dividends received must submit with its annual income tax return a detailed statement with full information in support of its position that it is entitled to the credit.

A corporation whose trade or business consists principally of the holding of stock and the collection of the income and gains therefrom is allowed a credit against net income for the amount of the dividends it receives from corporations if

A. it owns 80% or more of the voting stock of the corporation paying the dividends; and

B. the dividends were paid from income arising out of business done in this State. If the dividends are paid out of income arising from business done within and without the state the amount of the credit is determined in the ratio of taxable net income of the corporation paying the dividend assignable to Minnesota to the entire net income of the corporation. This ratio is determined by returns filed with the Income Tax Division for the taxable year preceding the distribution.

The term "income" includes income whether or not includible in computing "net income" and "taxable net income" under the Act. The term "business" means in this clause business in an economic sense.

The terms "taxable net income" and "net income" as used in this paragraph refer to those terms as defined by other provisions of the Act. It will be necessary, before applying this allocation formula, to establish that the dividends are from income derived from busines activities carried on partly within and partly without this State — this burden being on the taxpayer.

Any taxpayer claiming a credit for dividends received from another corporation must submit with its annual income tax return a detailed statement with full information in support of its position that it is entitled to the credit.

If the corporation whose business consists principally of the holding of the stock and the collection of the income and gains therefrom does not own 80% or more of the voting stock of the corporation paying the dividend, no credit is allowed for the dividends received.

INCT 1303 Mutual savings banks, regulated investment companies and building and loan or savings and loan associations. Mutual savings banks authorized and existing as such under the laws of this State, regulated investment companies as defined and limited by Section 851 of the Internal Revenue Code of 1954, and federal and state building and loan or savings and loan associations are not exempt from taxation under Minn. Stat. § 290.05. However, they are allowed a credit against taxable net income under Minn. Stat. § 290.21(4) and (5). In the case of the mutual savings bank, a credit is allowed equal to the interest and dividends paid or credited during the taxable year to the bank's depositors. To each regulated investment company a credit is allowed equal to the interest and dividends paid during the taxable year. Building and loan or savings and loan associations are allowed a credit equal to the dividends paid during the taxable year to its members as members.

A dividend paid and declared by a regulated investment company in accordance with Minn. Stat. § 290.21(5) which the company desires to designate as a capital gain dividend, need not be designated as such within thirty days after the close of the year for which credit is claimed for purposes of the company's tax but will be properly designated as a capital gain dividend if it is designated as such both in the resolution of the company declaring the dividend, a copy of which is to be attached to the corporate return, and in a written notice mailed to shareholders at the time of payment of the dividend. Provided, however, that the distribution of the dividends must be made to shareholders in the twelve month period following the close of the taxable year.

INCT 1304 Students. A credit against taxable net income is allowable for payments made to maintain in the taxpayer's home as a member of his household an individual other than an individual qualifying as a taxpayer's dependent for the purpose of providing educational opportunities for such individual. The individual must be a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in Section 170(c)(2)(3)(4) of the Internal Revenue Code of 1954, as amended through December 31, 1972. The student must be enrolled at an educational institution in the twelfth grade or less.

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The amount so allowed shall apply to amounts paid in the taxable year limited to an amount not to exceed $50 multiplied by the number of months the individual is maintained in the taxpayer's home. Such credit cannot be taken for any amounts for which the taxpayer receives compensation or reimbursement.

No other credit or deduction is allowed for any payments with respect to the individuals described in this regulation.

Chapter Fourteen: Estates and Trusts

INCT 1400 Imposition of tax. The Act prescribes that the taxes imposed upon individuals shall be applicable to the income of estates or of any kind of property held in trust.

The fiduciary is required to make and file the return and pay the tax on the taxable net income of the estate or trust.

A guardian, whether of an infant or other person, is a fiduciary, and, as such, is required to make and file the return for his ward and pay the tax. (See INCT 1500.)

Minn. Stat. § 290.01, subd. 20 states that Minnesota gross income for individuals, estates, and trusts shall mean their federal adjusted gross income. As applied to estates and trusts this generally means their federal taxable income as determined under Sections 641 through 691 of the Internal Revenue Code. The following provisions are not applicable: Section 642(a), (b), (c), (f), (g) and (h) and Section 691(b) and (c).

While various deductions are provided to estates and trusts under Minn. Stat. § Chapter 290, it should be carefully noted that an item claimed as a deduction in arriving at federal distributable net income or federal taxable income may not again be deducted on the Minnesota return. Estates are allowed a deduction for administration expenses as provided by Minn. Stat. § 290.01, subd. 20(d).

A. The income or gains of the estate of a decedent are subject to Minnesota income tax where:

1. the decedent was domiciled in Minnesota at the time of his death;

2. irrespective of the domicile of the decedent, the estate is administered or probated within Minnesota or the estate derives income and gains from business transacted within Minnesota or from tangible property situated within Minnesota; and

3. income and gains are from property coming into the control of a fiduciary who is subject to the laws of the State of Minnesota.

B. The income or gains of a trust are subject to Minnesota income tax where:

1. the trust is subject to administration in Minnesota;

2. the trust is being administered within Minnesota by any trustee, or trustees, residing, situated or domiciled within or without Minnesota, or by any agent of such trustee or trustees;

3. the trust is being administered outside of Minnesota and there is a trustee, or trustees, residing, situated or domiciled within Minnesota;

4. the trust, wherever administered, has income or gains which are derived from business transacted within Minnesota or from tangible property situated within Minnesota.

The amounts distributed to beneficiaries shall have the same character in the hands of the beneficiary as in the hands of the estate or trust.

INCT 1401 Taxable net income.

A. The Minnesota taxable net income of an estate or trust for the taxable year is its federal taxable income as defined in the Internal Revenue Code of 1954 with certain necessary adjustments. It must be noted however that no item claimed as a deduction in arriving at federal taxable income can be deducted again as an adjustment. It must be noted also that the federal taxable income figure must be modified to take account of non-assignable income or non-assignable gains or losses or other non-assignable deductions.

B. The necessary adjustments to federal taxable income are as follows:

1. There shall be added any subtractions from income under Section 642(b) of the Internal Revenue Code.

2. There shall be added the amount of federal income tax payments that are refunded or credited as provided in Minn. Stat. § 290.01, Subd. 20(a)(7).

3. There shall be added or subtracted the share of the estate or trust in the Minnesota Modification as determined under Regulation INCT 1403.

4. There shall be subtracted the modification relating to gains, allocated to corpus, described in Minn. Stat. § 290.01, Subd. 20(b)(2) with respect to gains from the sale or other disposition of property (to the extent that such gains are excluded from federal distributable net income of the estate or trust).

5. There shall be subtracted the amount of federal income taxes that are allowed as a deduction under Minn. Stat. § 290.18, Subd. 2.

INCT 1402 Income of beneficiary. A beneficiary is subject to tax on his gross income, determined under Minn. Stat. § 290.01, Subd. 20, including his share of the distributable net income of an estate or trust, determined under the applicable provisions of the Internal Revenue Code of 1954, increased or decreased by his share of the applicable Minnesota adjustments — see INCT 1403.

A beneficiary's federal adjusted gross income figure shall be modified to take account of non-assignable income or gains or losses or expenses, interest, taxes, or other deductions as provided in Minn. Stat. § 290.17, 290.18, Subd. 1(1), 290.19, and 290.20. In addition, no item claimed as a deduction in arriving at federal adjusted gross income can be deducted again as an adjustment.

A nonresident beneficiary is subject to tax on his share of the distributable net income of the estate or trust which is derived from business transacted within this state or from tangible property situated within this state. A nonresident beneficiary is subject to tax on the income in respect of a decedent which is transferred to him as provided in Minn. Stat. § 290.077, subd. 3.

A beneficiary's share of the distributable net income shall have the same character in the hands of the beneficiary as in the hands of the estate or trust.

INCT 1403 Minnesota modification.

A. Adjustments.

1. In general. The Minnesota modification consists of certain adjustments applicable to federal taxable income of an estate or trust, and to federal adjusted gross income of the beneficiaries of an estate or trust, in determining Minnesota taxable net income of an estate or trust and Minnesota gross income of the beneficiaries of an estate or trust.

The federal taxable income of an estate or trust and the federal adjusted gross income of a beneficiary shall be modified to take account of non-assignable income or gains or losses or expenses, interest, taxes, or other deductions as provided in Minn. Stat. § 290.17, 290.18, Subd. 1(1), 290.19, and 290.20. No item claimed as a deduction in arriving at the federal adjusted gross income of a beneficiary, can be deducted again as an adjustment.

2. Adjustments applicable to both estates and trusts and beneficiaries of estates and trusts.

a. There shall be added any subtractions from income under Section 642(c), (f) and (h) of the Internal Revenue Code.

b. There shall be added or subtracted the additions or subtractions stated in Minn. Stat. § 290.01, Subd. 20(a) and (b) except Subd. 20(a)(7), and Subd. 20(b)(2) pertaining to the modification relating to gains not allocated to corpus and included in federal distributable net income.

c. There shall be added the expenses, interest, taxes, depreciation, depletion and other deductions connected with or allocable against the production or receipt of all income or gains not included in the measure of tax imposed by the Minnesota Income Tax Act.

d. There shall be added the expenses, interest, taxes, depreciation, depletion or other deductions connected with or allocable against the management, conservation or maintenance of property held for the production of all income or gains not included in the measure of the tax imposed by the Minnesota Income Tax Act.

e. There shall be subtracted the interest paid or accrued on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to Minnesota income tax but exempt from federal income tax, to the extent that such interest is not deducted in computing federal taxable income of an estate or trust, or federal adjusted gross income of any beneficiary of an estate or trust, or federal taxable income of an estate or trust which is a beneficiary of another estate or trust.

f. There shall be subtracted any charitable contributions that are allowed as a deduction under Minn. Stat. § 290.23, Subd. 2, except that portion of the charitable deduction allocable against income or gains not included in the measure of the tax imposed by the Minnesota Income Tax Act. That portion of the charitable deduction allocable against income or gains included in the measure of the tax imposed by the Minnesota Income Tax Act is allowed.

g. There shall be allowed to beneficiaries any unused loss carryovers and excess deductions on termination of an estate or trust allowable under Minn. Stat. § 290.23, Subd. 3.

3. Adjustments applicable only to estates and beneficiaries of estates.

a. The modification stated in Minn. Stat. § 290.01, Subd. 20(c) affecting shareholders of electing small business corporations is applicable to estates.

b. There shall be added any subtractions from income under Section 642(g) of the Internal Revenue

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Code. The modification stated in Minn. Stat. § 290.01, Subd. 20(d) allows a deduction for certain administration expenses of an estate in accordance with the provisions of the Statute, except that no deduction shall be allowed for administration expenses connected with or allocable against the production or receipt of all income or gains not included in the measure of the tax imposed by the Minnesota Income Tax Act.

4. Adjustments applicable only to trusts and beneficiaries of trusts.

a. There shall be added any trust administration expenses connected with or allocable against the production or receipt of all income or gains not included in the measure of the tax imposed by the Minnesota Income Tax Act.

b. There shall be subtracted any administration expenses of a trust connected with or allocable against the production or receipt of all income or gains exempt from federal income tax but subject to Minnesota income tax, to the extent that such administration expenses are not deducted in computing federal taxable income of a trust, or federal adjusted gross income of any beneficiary of a trust, or federal taxable income of an estate or trust which is a beneficiary of another trust.

B. Allocation of Minnesota modification. The following rules shall apply in the apportionment of the Minnesota modification to estates, trusts, and their beneficiaries.

1. General method. The respective shares of an estate or trust and its beneficiaries (including, for the purpose of this allocation, non-resident beneficiaries) in the Minnesota Modification shall be in the proportion to their respective shares of federal distributable net income of the estate or trust.

2. No federal distributable net income — Method. If there is no federal distributable net income, as computed for federal income tax purposes, then the Minnesota Modification, if any, shall be distributed in accordance with the terms of the will or trust instrument or in accordance with Minnesota law. Any balance of the Minnesota Modification shall be allocated to the estate or trust.

3. Alternate method. The Commissioner of Revenue may, in his discretion permit the use of another method for allocating the Minnesota Modification, in accordance with such provisions as he may require.

INCT 1404 Income in respect of a decedent, deductions in respect of a decedent, deductions for federal estate tax and Minnesota inheritance tax and transfers of income in respect of a decedent to non-residents.

A. Income in respect of a decedent. There shall be added any item of income in respect of a decedent subject to Minnesota income tax, as provided in Minn. Stat. § 290.077, Subd. 1 not included in federal taxable income of an estate or trust, or federal adjusted gross income of any beneficiary of an estate or trust, or federal taxable income of an estate or trust which is a beneficiary of another estate or trust or federal adjusted gross income of any other recipient.

Assign any such item of income in respect of a decedent to the estate, trust, benefiiciary or other recipient receiving such income in respect of a decedent.

B. Deductions in respect of a decedent. Items to be added back to the estate, trust, beneficiary or other recipient allowed these deductions for federal income tax purposes. Disallow (add back) the deductions claimed under Section 691(b) of the Internal Revenue Code of 1954, where such deductions were used to compute the federal taxable income of an estate or trust, or federal adjusted gross income of any beneficiary of an estate or trust, or the federal taxable income of an estate or trust which is a beneficiary of another estate or trust or federal adjusted gross income of any other recipient. There shall be subtracted as provided in Minn. Stat. § 290.077, Subd. 2, the deductions in respect of a decedent provided that such deductions are attributable to income subject to Minnesota income tax.

Assign these deductions to the estate, trust, beneficiary or other recipient allowed such deductions in accordance with the Statute.

C. Deduction for federal estate tax. Item to be added back to the estate, trust, beneficiary or other recipient allowed this deduction for federal income tax purposes. Disallow (add back) the deduction claimed under Section 691(c) of the Internal Revenue Code of 1954, where such deduction was used to compute the federal taxable income of an estate or trust, or federal adjusted gross income of any beneficiary of an estate or trust, or the federal taxable income of any estate or trust which is a beneficiary of another estate or trust or federal adjusted gross income of any other recipient. There shall be subtracted as provided in Minn. Stat. § 290.077, Subd. 4, the federal estate tax attributable to income in respect of a decedent provided that such deduction is attributable to income in respect of a decedent subject to Minnesota income tax.

Assign this deduction to the estate, trust, beneficiary or other recipient allowed such deduction in accordance with the Statute.

D. Deduction for Minnesota inheritance tax. There shall be subtracted as provided in Minn. Stat. § 290.077, Subd. 4, the Minnesota inheritance tax attributable to income in respect of a decedent provided that such deduction is attributable to income in respect of a decedent subject to Minnesota income tax.

Assign this deduction to the estate, trust, beneficiary or other recipient allowed such deduction in accordance with the Statute.

E. Income in respect of a decedent transferred to non-residents is governed by Minn. Stat. § 290.077, Subd. 3.

INCT 1405 Accumulation and capital gain distributions. The beneficiary of a trust whose Minnesota gross income includes all or part of an accumulation distribution or a capital gain distribution by such trust, shall be allowed credit for the Minnesota income taxes paid by the trust attributable to such accumulation distribution or capital gain distribution, and the trust shall not be entitled to a refund or credit of Minnesota income tax, all in a manner corresponding to the provisions for credit and refund treatment for the federal income tax relating to accumulation distribution or capital gain distribution as contained in the Internal Revenue Code of 1954, as amended.

No refund or credit of Minnesota income tax shall be allowed to a trust for any preceding taxable year by reason of an accumulation distribution or capital gain distribution deemed to have been made by such trust in such year.

INCT 1406 Personal credit. See INCT 500

INCT 1407 Grantors and others treated as owners. The provisions of Section 671 through 678 of the Internal Revenue Code of 1954, as amended, control in the determination of the income which is to be attributed to the grantor or others treated as the owner of the trust, subject to the modifications that are required under the provisions of Minn. Stat. § 290.01, Subd. 20 and Minn. Stat. §§ 290.17-290.20 inclusive).

INCT 1408 Employees trusts, annuity plans, deferred compensation plans. A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, that is determined by the Internal Revenue Service to be a qualified trust under 401 of the Internal Revenue Code of 1954 as amended, is not subject to Minnesota income tax. The Commissioner of Revenue will, upon request, furnish a letter advising of exemption from Minnesota income tax provided that a copy of the federal determination letter is furnished with the request.

An employer's contributions to an employee's trust, annuity plan, or deferred compensation plan shall be allowed as a deduction under Section 290.26 to the extent that a deduction is permitted under Section 404 of the Internal Revenue Code of 1954, as amended, provided that an employer may deduct contributions to an employee stock ownership trust, as defined in Section 290.01, Subd. 25, not exceeding 30% of the compensation otherwise paid or accrued during the taxable year to all employees under the plan. If the employer claims a deduction under Section 290.26 for contributions to an employee stock ownership trust, he may not in addition claim a deduction for such contributions under Minn. Stat. § 290.21, subd. 3.

INCT 1409 Revocable trusts, income taxable to grantor. Under the provisions of section 676 of the Internal Revenue Code of 1954, as amended, the income of a trust shall be taxable to a grantor who is treated as the owner where power to revest title in the grantor is exercisable by the grantor, or nonadverse party, or both, subject to the modifications that are required under the provisions of Minn. Stat. § 290.01, Subd. 20 and Minn. Stat. §§ 290.17-290.20 (inclusive).

INCT 1410 Income taxable to grantor or person other than grantor treated as owner, income of estate or trust in case of divorce. Under the provisions of Sections 677 and 678 of the Internal Revenue Code of 1954, as amended, the income of a trust shall be taxable to the grantor, or person other than the grantor, who is treated as the owner of the trust under certain circumstances.

The provisions of Section 682 of the Internal Revenue Code of 1954, as amended, are applicable in determining the taxability of income received from the trust by a wife who is divorced or legally separated under a decree of divorce or of separate maintenance, or who is separated from her husband under a written separation agreement.

The above provisions of the Code are subject to the modifications that are required under the provisions of Minn. Stat. § 290.01, Subd. 20 and Minn. Stat. §§ 290.17-290.20 (inclusive).

Chapter Fifteen: Returns

INCT 1500 Person required to make returns.

A. A return is required:

1. In any case when the amount of tax on the taxable net income exceeds the allowable credits under Minn. Stat. § 290.06,

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2. In any case when the amount of gross income is in excess of the amounts shown below.

B. In determining the amount of gross income for purposes of determining filing requirements, there shall be included all gross income as defined in Section 61 of the Internal Revenue Code, as modified and adjusted under the provisions of Minn. Stat. §§ 290.08, 290.17 and 290.65.

C. A single individual must file a return:

1. If his gross income exceeds $1,000,

2. If he has reached age 65 at the close of the taxable year, and his gross income exceeds $1,800,

3. If he is blind at the close of the taxable year, and his gross income exceeds $1,800,

4. If he is blind and has reached age 65 at the close of the taxable year, and his gross income exceeds $2,400.

D. A married individual living with his spouse at the close of the taxable year must file a return:

1. If the combined gross income of him and his spouse exceeds $1,800,

2. If either spouse has reached age 65 at the close of the taxable year and their combined gross income exceeds $2,400,

3. If both spouses have reached age 65 at the close of the taxable year and their combined gross income exceeds $2,800,

4. If either spouse is blind at the close of the taxable year and their combined gross income exceeds $2,400,

5. If either spouse is blind and either spouse has reached age 65 at the close of the taxable year and their combined gross income exceeds $2,800,

6. If either spouse is blind and both spouses have reached age 65 at the close of the taxable year, and their combined gross income exceeds $3,300,

7. If both spouses are blind at the close of the taxable year and their combined gross income exceeds $2,900,

8. If both spouses are blind and one spouse has reached age 65 at the close of the taxable year and their combined gross income exceeds $3,300,

9. If both spouses are blind and both spouses have reached age 65 at the close of the taxable year and their combined gross income exceeds $3,600.

E. The executor or administrator of the estate of a decedent must file an individual return on Form M-1 for the decedent with respect to the portion of the taxable year during which he was alive if his gross income during that period exceeds $750.

F. The executor or administrator of the estate of a decedent must file a fiduciary return on Form M-2 for the estate if its gross income exceeds $750.

G. The trustee or other fiduciary of property held in trust must file a fiduciary return on Form M-2 for the trust if its gross income exceeds $750.

H. The guardian of an infant or other incompentent person must file an individual return on Form M-1 with respect to the infant or other person's income if such income exceeds $1,000.

I. A corporation must file a corporation return on Form M-4 if its Minnesota taxable net income exceeds $500 or if its gross income from all sources exceeds $5,000.

INCT 1501 Signing the return. The return shall be signed by the individual taxpayer or, if a corporation, by an authorized person. The return shall contain a statement that the person signing understands that he may be subject to prosecution for perjury if he knowingly makes a false statement as to a material fact. The return shall also contain a confession of judgment for the amount of tax shown as due to the extent the tax is not timely paid.

If a return is prepared for a taxpayer by another, the return shall be signed by the taxpayer and the preparer, and the return shall state that the preparer understands that he may be subject to prosecution for perjury if he knowingly makes a false statement as to a material fact. If the return is prepared by an individual, it shall be signed by the individual. If the return preparer is a firm, the return shall be signed with the firm name. If the firm name is stamped or typed, the return shall be signed by the person authorized to sign the return in behalf of the firm.

If the return is prepared by a full-time employee of an individual or corporate taxpayer as part of his usual employment duties, such employee need not sign the return as preparer, but an authorized person shall sign the return for the corporation.

In the case of banks, trust companies, or others preparing a substantial number of fiduciary returns, such fiduciary may use a facsimile signature in making a Minnesota Fiduciary Income Tax Return on Form M-2, subject to the following conditions:

A. Each group of Minnesota Fiduciary Income Tax Returns forwarded to the Minnesota Department of Revenue shall be accompanied by a letter signed by the person authorized to sign such returns declaring under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by him to sign the returns filed and that such signature was affixed to the returns by him or at his direction. The letter shall also list each return by name and identifying number.

B. A signed copy of the letter must be retained by the person filing the returns and must be available for inspection by the Minnesota Department of Revenue.

C. Where the income tax returns are reproduced by photocopying or similar reproductive methods for filing with the Minnesota Department of Revnue, the facsmile signature must be affixed subsequent to the reproductive process.

INCT 1502 Information included in return. The income tax return shall include the same name or names and the same address as the taxpayer shall use in making his federal income tax return and it shall include the taxpayer's social security number. The return shall include the amount of the taxpayer's federal adjusted gross income as is reported on his federal income tax return, or else the taxpayer shall attach a copy of his federal income tax return to his Minnesota return. The taxpayer shall furnish explanation concerning the nature of, and amounts of, any income included in his federal adjusted gross income figure that is not included as income on his Minnesota return.

INCT 1503 Returns of married persons.

A. A person who is married at the close of the taxable year must file a return if either of the following conditions exist:

1. The tax on his own taxable net income or the combined taxable net income of himself and his spouse exceeds the allowable specific credits as provided in Minn. Stat. § 290.06; or

2. His gross income or the combined gross income of himself and his spouse exceeds the filing requirements set forth at Minn. Stat. § 290.37.

B. A husband and wife may file separate returns on separate forms, a joint return, or separate returns on a single form (a combined form). Combined returns are discussed in INCT 1504.

If separate returns are filed, each spouse shall report only his or her own separate income and only his or her own separate deductions. The "standard deduction" allowed by Minn. Stat. § 290.09, subd. 15 may not be claimed by a married person whose spouse "itemizes" deductions, thus, if one spouse itemizes deductions, the other spouse must also itemize deductions.

C. If a joint income tax return is filed, the total income of the spouses must be included in the return, and all deductions and credits are taken from such total income. No joint return can be made if the husband and wife have different taxable years, except where the taxable years end on a different day due to the death of one of the spouses (see discussion which follows in this section).

A joint return must be signed by both the husband and the wife. The spouses are jointly and severally liable for the tax due on the filing of a joint return. If a refund is payable, the refund check will be issued payable jointly to the husband and the wife.

D. If both the husband and wife consent, they may change their election from separate returns to a joint return, or from a joint return to separate returns, but such change of election must be made within the period of time that the original returns are open to assessment under the provisions of Minn. Stat. § 290.49.

E. If either spouse dies during the taxable year, and the surviving spouse does not remarry before the close of the taxable year, a joint return can be filed by the surviving spouse and the executor or administrator of the decedent's estate (including income and deductions of the decedent during only that part of the taxable year which is prior to the date of his death).

F. A surviving spouse, who does not remarry during the taxable year, may make a joint return for himself and the deceased spouse (including income and deductions of the decedent during only that part of the taxable year prior to the date of death) provided:

1. No return for that taxable year was made by the decedent

2. No executor or administrator has been appointed before the return is made

3. No representative is appointed before the last day prescribed by law for filing of the return of the surviving spouse.

Notwithstanding the above, an executor or administrator may subsequently disaffirm the joint return by filing a separate return for the decedent, within one year after the last day prescribed by law for filing the return of the surviving spouse, in which case the survivor's return shall be considered to be his separate return.

INCT 1504 Form of return — combined returns. The format of the income tax returns are prescribed each year by the Commissioner of Revenue based on the data required for that year.

Married persons may file separate returns on separate

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forms, a joint return, or separate returns on a single form (a combined return). See INCT 1503 regarding separate or joint returns.

Married persons may file separate returns on a single form (a combined return), in which case any itemized deductions may be taken by either or divided between them as they may elect. Combined returns may not be filed if either husband or wife was a nonresident of Minnesota at any time during the taxable year.

In the case of combined returns, if the sum of the payments, including withholding and estimated tax payments, by either spouse exceeds that spouse's tax liability, such excess will be applied to the separate tax liability (if any) of the other spouse. If the tax payments exceed the total of all income tax liabilities of both spouses, a joint refund will be made to both spouses.

INCT 1505 Amended returns. A taxpayer may correct any error in filing a return by filing an "Amended Return" — if the correction results in a refund due, the Amended Return will be considered to be a claim for refund and, if such claim is made within the statutory period set forth in Minn. Stat. § 290.50, the revenue department will remit the amount of refund due to the taxpayer.

INCT 1506 Death of taxpayer.

A. Return of decedent. In the case of the death of a taxpayer during his taxable year, a return shall be filed for the fractional year beginning with the date of the commencement of his taxable year and ending with the date of death, unless a return is filed in accordance with Minn. Stat. § 290.38 (See INCT 1503). For date return is required to be filed see INCT 1512.

B. Return of Estate. The first return of the estate of a deceased person shall be filed

1. for the period commencing with the date of his death and ending with the last day of his normal taxable year, or

2. for a fiscal year of not more than 12 months commencing with the date of the decedent's death. If the executor or administrator files a return for a fiscal year beginning with the date of death, such fiscal year must end on the last day of a calendar month and may not be for a period in excess of 12 months. For date return is required to be filed, see INCT 1512.

INCT 1507 Election of year consisting of 52-53 weeks.

A. General rule. Minn. Stat. § 290.40 provides, in general, that a taxpayer may elect to compute his net income and taxable net income on the basis of a fiscal year which —

1. Varies from 52 to 53 weeks.

2. Ends always on the same day of the week and

3. Ends always on —

a. Whatever date this same day of the week last occurs in a calendar month, or

b. Whatever date this same day of the week falls on which is nearest to the last day of the calendar month. For example, if the taxpayer elects a taxable year ending always on the last Saturday in November, then for the year 1973, the taxable year would end on November 24, 1973. On the other hand, if the taxpayer had elected a taxable year ending always on the Saturday nearest to the end of November, then for the year 1973, the taxable year would end on December 1, 1973. Thus, in the case of a taxable year described in 3.a., the year will always end within the month and may end on the last day of the month, or as many as six days before the end of the month. In the case of a taxable year described in 3.b., the year may end on the last day of the month, or as many as three days before or three days after the last day of the month.

B. Application of effective dates.

1. For the purpose of determining the effective date for the applicability of any provision of this chapter which is expressed in terms of taxable years beginning or ending with reference to the first or last day of a specified calendar month, including the time for filing returns and other documents, paying tax, or performing other acts, a 52-53-week taxable year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the 52-53-week taxable year and is deemed to end or close on the last day of the calendar month ending nearest to the last day of the 52-53-week taxable year, as the case may be. The preceding sentence does not apply to the computation of tax if paragraph 2. of this regulation relating to the computation under Minn. Stat. § 290.33 of the effect of changes in rates of tax during a taxable year applies. The provisions of this paragraph may be illustrated by the following examples:

Example. Assume that an income tax provision is applicable to taxable years beginning on or after January 1, 1972. For that purpose, a 52-53-week taxable year beginning on any day within the period December 26, 1971, to January 4, 1972, inclusive, shall be treated as beginning on January 1, 1972.

Example. Assume that an income tax provision requires that a return must be filed on or before the 15th day of the third month following the close of the taxable year. For that purpose, a 52-53-week taxable year ending on any day during the period May 25 to June 3, inclusive, shall be treated as ending on May 31, the last day of the month ending nearest to the last day of the taxable year, and the return, therefore, must be made on or before August 15.

2. If a change in the rate of tax is effective during a 52-53-week taxable year (other than on the first day of such year as determined under paragraph 1. of this regulation), the tax for the 52-53-week taxable year shall be computed in accordance with Minn. Stat. § 290.33, relating to effect of changes, and the regulations thereunder. For the purpose of the computation under Minn. Stat. § 290.33, the determination of the number of days in the period before the change, and in the period on and after the change, is to be made without regard to the provisions of paragraph 1. of this regulation. The provisions of this paragraph may be illustrated by the following examples:

Example. Assume a change in the rate of tax is effective for taxable years beginning after June 30, 1971. For a 52-53-week taxable year beginning on Wednesday, November 4, 1970, the tax must be computed on the basis of the old rates for the actual number of days, from November 4, 1970, to June 30, 1971, inclusive, and on the basis of the new rates for the actual number of days from July 1, 1971, to Tuesday, November 2, 1971, inclusive.

Example. Assume a change in the rate of tax for taxable years beginning after June 30. For this purpose, a 52-53-week taxable year beginning on any of the days from June 25 to July 4, inclusive, is treated as beginning on July 1. Therefore, no computation under Minn. Stat. § 290.33 will be required for such year because of the change in rate.

INCT 1508 Returns in cases where accounting period is changed. Generally, no return can be made for a period of more than twelve months (but see Minn. Stat. § 290.40(2)). A separate return for a fractional part of a year is therefore required whenever there is a change, with the approval of the Commissioner, in the basis of computing net income from one taxable year to another taxable year. The periods to be covered by such separate returns in the several cases are stated in Minn. Stat. § 290.32. The requirements with respect to the filing of a separate return incident to a change in accounting period and the payment of tax for a part of a year are the same as for the filing of a return and the payment of tax for a full taxable year closing at the same time. For the computation of the tax due, see Minn. Stat. § 290.32.

INCT 1509 Returns in cases where residence is changed. In cases where during the taxable year an individual changes his status from that of a resident to that of a non-resident or from that of a non-resident to that of a resident, returns, if required, shall be filed for that portion of the year the individual was a resident of this State.

The net income shall be computed in the same manner as in the case of a resident, except that there shall be included in the return for the period of residence only the income and deductions and credits against net income for that period. The credits against the tax allowed by Minn. Stat. § 290.06, Subd. 3, shall likewise be allowed for the number of months the individual was a resident of this State.

INCT 1510 Partnership returns. Every partnership (including syndicates, groups, pools, joint ventures, or other unincorporated organizations, through or by the means of which any business, financial operation or venture is carried on, and which are not trusts, estates, limited partnerships taxable as corporations, or corporations within the meaning of the Minnesota Income Tax Act of 1933 and acts amendatory thereof), whose gross income or any portion thereof is assignable to this State, is required to make a return for each taxable year on Form M-3 sworn to by one of the partners.

The return shall specifically set forth the items of gross income, deductions, names and addresses of partners, marital status of the partners, salaries of the partners as determined by the partnership agreement, the percentage of the net income, the distributive share of each, and any other data required under the Act. If any basis of distribution other than a straight fractional part of the net income is used, complete details must accompany the return to substantiate this distributive share. The return shall also set forth a comparative balance sheet listing assets and liabilities for the beginning and ending of the taxable period, together with an analysis of the partners' investment account and a reconciliation of book income with income for tax purposes.

Every partnership whose business is carried on partly within and partly without this State must also file Form M-5, which is available upon application from the Commissioner.

It is imperative that Schedule T of Form M-5 be completed and made a part of the return, regardless of the method used for assigning income to this State. If a separate accounting for Minnesota business is used to reflect income assignable to this State, Schedules U and V of Form M-5 must be completed.

INCT 1511 Information returns.

A. In general. If a corporation, individual, partner-

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ship, estate, trust, or fiduciary makes payments during the calendar year of salaries, wages, fees, commissions, bonuses, rents, royalties, interest or dividends to another corporation, individual, partnership, estate, trust, or fiduciary, and if such payments fall into any of the categories listed below, the corporation, individual, etc., making the payments shall file returns of information on Form M-9 and execute Form M-10 under oath. The categories are as follows:

1. Salaries, wages, fees, commissions, bonuses, etc., in excess of $600, paid to all residents or similar payments to nonresidents engaged in performance of personal services within this State. Those salaries and wages that are reported on wage and tax statements, Form MW-2, or acceptable alternatives need not be reported again on Form M-9. The wage and tax statement is required when withholding is necessary under Minn. Stat. § 290.92.

2. Rents and royalty paid in excess of $600 on property located within this State whether paid to residents or non-residents.

3. Dividends in excess of $10 paid to residents of Minnesota.

4. Interest of $10 or more paid to residents of Minnesota.

5. Other fixed or determinable income in excess of $500 in any calendar year.

6. Earnings in excess of $10 distributed by savings, building and loan associations to its members.

Sums paid in respect of life insurance, endowment or annuity contracts come within the meaning of the term, "fixed or determinable income."

For the purpose of the return of information, an amount is deemed to have been paid when it is credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or manner of payment, or condition upon which payment is to be made and which is made available to him so that it may be drawn at any time and its receipt brought within his control and disposition.

The duty to file Forms M-9 and Forms M-10 is also imposed upon

7. Organizations which are tax exempt under Minn. Stat. § 290.05 and

8. Individuals, corporations, estates, trust, partnerships and fiduciaries which are not required to file returns under Minn. Stat. § 290.37.

These returns shall be filed on or before April 15th succeeding each calendar year unless written permission for an extension has been granted by the Commissioner and must always show payment for the preceding calendar year even in case where the taxpayer's records are kept on a fiscal year basis.

B. Payments to public employees. On or before March first of each year the State Treasurer and the treasurer or other corresponding officer by whatever name known, of any political subdivision of the State, of every city, village or borough, and of every school district shall complete and file returns of information with the Commissioner on Forms M-9 and M-10 with respect to payments of salaries or wages in excess of $600 made during the preceding calendar year to employees or officials of such political subdivision, city, village, borough, or school district.

INCT 1512 Date for filing returns.

A. Returns of Income —

1. General Rule. Returns of income must, as a general rule, be filed not later than the 15th day of the fourth month following the close of the taxable year. Special rules apply to corporations, estates and trusts, and decedents (see paragraphs 2., 3., and 4. below).

2. Corporations. Returns of income of corporations must be filed not later than the 15th day of the third month following the close of the taxable year.

3. Estates and Trusts —

Final returns. Upon the completion of the administration of an estate and allowance of his final accounting, an executor or administrator may immediately file a return of income of the estate for the taxable year in which the administration was closed. Similarly, upon the termination of a trust, the trustee may immediately make a return for the taxable year terminated by the close of the trust. Although the return may be filed earlier, any return required to be filed at the close of an estate or trust must be filed not later than the 15th day of the fourth month following the end of the month in which the estate was closed or the trust terminated.

4. Decedents. In the case of the death of a taxpayer during his taxable year, a return shall be filed for the fractional year beginning with the date of the commencement of his taxable year and ending with the date of death, unless a return is filed in accordance with Minn. Stat. § 290.38. This return (a return not filed in according with Minn. Stat. § 290.38) must be filed not later than the 15th day of the fourth month following the close of the twelve month period which began with the first day of such fractional part of a year.

B. Returns of Information —

1. Partnership. Partnership returns must be filed not later than the 15th day of the fourth month following the close of the taxable year.

2. Form M-9 and Form M-10. Returns of information on Form M-9 and Form M-10 must be filed not later than the 15th day of April of each year.

INCT 1513 Due date falling on Saturday, Sunday or legal holiday. If any return required under the provisions of Minn. Stat. § Chapter 290 becomes due upon a Saturday, Sunday or legal holiday, such return shall be considered timely filed if it is filed or received upon the next succeeding regular business day. In determining whether or not a return has been timely filed, Saturday shall not be considered as a regular business day.

INCT 1514 Extension of time for filing return.

A. General rule. Whenever in his judgement good cause exists by reason of sickness, absence, or other disability, the Commissioner may extend the time for filing the return for a period not exceeding six months from the due date of the return. The law also permits the Commissioner to extend the time, in the case of a taxpayer who is outside of the United States, for a period of 30 days after he returns to the State of Minnesota.

The extension request must be received on or before the due date for filing of the return or it cannot be considered. The extension application of a corporation should be submitted on Form 522-C, and the application for an individual, estate or trust should be submitted on Form 522-E. An extension of time for the filing of a return is also effective as an extension of time for the payment of any tax that may be due within the extended period, however the taxpayer is subject to the payment of six percent interest from the date payment was originally due until the date when payment is made. See INCT 1601 regarding the due date for payment of tax. In the event that payment is not made on or before the original, or extended, due date a penalty of five percent of the unpaid tax is imposed, and the six percent interest is computed based on the amount due plus the five percent penalty. See INCT 1800.

B. Federal extensions. If an individual estate, or trust receives an extension of time to file his federal income tax return, he is granted an extension to the same date for the filing of his Minnesota income tax return. The taxpayer should attach a copy of the federal extension approval to his Minnesota return. If the taxpayer obtains the automatic two month federal extension (by filing federal form 4868 with the federal office by the return due date), he should submit a copy of his completed form 4868 with his Minnesota income tax return. In the above cases, where the taxpayer has received a federal extension of time to file, he is not required to complete and file the Minnesota form 522-E on or before the date his Minnesota return was originally due.

C. Automatic extensions for servicemen and for civilians outside of the United States. A person serving in the Armed Forces of the United States or the United Nations is not required to file a return or to pay a tax until six months after the termination of such service and penalties and interest are only applicable to the extent of amounts due and unpaid on the date six months after termination of military service. No application on form 522-E is necessary, however the taxpayer should furnish a statement showing that he is claiming the military extension and giving pertinent information to show his entitlement. See INCT 2206.

A civilian who is outside of the United States continuously and for more than 90 days is not required to file a return or to pay a tax until six months after his return to the United States. No penalty is applicable if the tax is paid within this period, however the taxpayer is subject to the payment of six percent interest from the date the payment was otherwise due until the date when payment is made. No application on form 522-E is necessary, however the taxpayer should furnish a statement showing that it is claiming the out-of-the United States extension, and giving pertinent information to show his entitlement. See paragraph A. above concerning extensions to 30 days after return to state of Minnesota following application by due date on form 522-E. See Regulation INCT 2207.

Chapter Sixteen: Payment of Tax

INCT 1600 Who must pay tax. All taxes imposed by this Act, together with interest and penalties shall be paid by the taxpayer upon whom imposed or his legal representative.

The legal representative may be the executor, administrator, guardian, trustee, conservator, or other person with legal authority to act for the taxpayer.

INCT 1601 Time for payment of tax. The law in general requires that individual taxpayers shall pay the tax due in full on or before the time fixed for the filing of the return. See, however, INCT 1514 and INCT 2206 and INCT 2207 regarding extensions of time to file the return and to pay the tax. See, also INCT 1800 regarding the payment of penalty and interest for failure to pay the tax when due.

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The law specifically provides, in the case of estates and trusts and corporations, that the balance of any tax due on the date for the filing of the return, after applying any tax credit and payment of estimated tax, may be paid in two installments, as follows:

A. as to estates and trusts, one-half of the tax shall be paid at the time fixed for the filing of the return, and the second one-half shall be paid on or before six months thereafter.

B. as to corporations, one-half of the tax shall be paid at the time fixed for the filing of the return, and the second one-half shall be paid on or before three months thereafter.

No penalty or interest is payable so long as the installment payments are made within the time stated above.

If the taxpayer elects to make payment in installments, and the installment is not paid in full on or before the date fixed for its payment, where fixed either by law or by the Commissioner in accordance with the terms of an extension, the whole amount of the unpaid balance shall become due and payable.

INCT 1602 Extensions. Whenever in his judgment good cause exists, the Commissioner may extend the time for payment of the tax for a period not exceeding six months from the date of the tax or the installment of tax.

Also, in any case where any portion of the tax has not been paid six months from the date prescribed by law for its payment, the Commissioner may enter into a written agreement with the taxpayer providing for the periodic payment of taxes, including penalty and interest, for a further period not exceeding 30 months.

See INCT 1514 regarding extensions of time to file the return and to pay the tax, and see INCT 1800 regarding the payment of penalty and interest for failure to pay the tax when due.

INCT 1603 Payment before due date. The tax imposed by Minn. Stat. § Chapter 290, or any installment of tax may, at the election of the taxpayer, be paid prior to the date prescribed for his payment.

INCT 1604—Tax due of $1.00 or less. In any case in which the liability for income taxes is $1 or less, the taxpayer need not pay the tax.

Chapter Seventeen: Assessments - Refunds

INCT 1700 Procedures. If, following a review of available information, it appears that a taxpayer is subject to an income tax liability, or that he is entitled to a refund, a letter proposing that such liability be paid or that such refund be issued is sent to the taxpayer. No further action will be taken by the department during the period of 30 days following the proposal. During this time the taxpayer, if he does not agree to the proposal, may file his letter of protest in which he states the basis of his disagreement. If, following a review of the taxpayer's protest, the department representative does not agree with the protest, a conference will be scheduled at which the taxpayer may appear, if he has so requested in his protest letter.

If no protest is made within the 30 day period, an Order for refund or for payment will be issued by the department. Such order will also be issued if agreement is not reached between the taxpayer and the department upon review or hearing of a taxpayer's protest.

The taxpayer is allowed a period of 30 days following the Commissioner's Order within which he may either pay any amount shown as due or make his written appeal to the Minesota Tax Court. Such appeal may be extended an additional thirty days by the Tax Court.

INCT 1701 Time limits.

A. In general. Except as otherwise provided in Minn. Stat. Chapter 290 and except for the special circumstances referred to below, the period of limitations upon the assessment of tax for a taxable year ends three and one-half years from the date the return was filed. In the absence of a waiver agreement pursuant to Minn. Stat. § 290.49, Subd. 8, an assessment is not valid if made after such period. For the purposes of applying the statute of limitations herein referred to, a return filed before the last day prescribed by law for the filing thereof is considered as filed on such last day.

B. Omission of 25 percent of gross income. Where a taxpayer has omitted an amount properly includible in gross income in excess of 25 percent of the gross income as stated in the return, the statutory period of limitations does not end until six and one-half years after the return was filed.

C. Omission of gain on liquidation. Where a taxpayer omits an amount from gross income which was properly includible therein as gain on the liquidation of a corporation, the statutory period of limitations does not end until 6½ years after the return was filed.

D. False or fraudulent return; no return filed. In the case of a false or fradulent return or failure to file a return, an assessment may be made at any time.

E. Request for application of special statute of limitations. The period of limitations set forth above applies to all taxpayers. However, in the case of income received during the lifetime of a decedent or by his estate during the period of its administration or by a trustee of a terminating trust or other fiduciary who, because of custody of assets would be liable for the payment of tax under Minn. Stat. § 290.54, or by a corporation contemplating dissolution, the tax shall be assessed within eighteen months after written request therefor by the fiduciary or legal representative of the estate or by the corporation, but not after the expiration of three and one-half years after the return was filed. A request, in order to start the eighteen month limitation, must be made after the return is filed and must be on the form the Commissioner prescribes.

Furthermore, in the case of corporation contemplating dissolution the eighteen month period shall apply only if the conditions of clauses (1), (2), and (3) of Minn. Stat. § 290.49, Subd. 2, are fully complied with.

INCT 1702 Claims for refund. A taxpayer who claims that he has made an overpayment of his income tax liability for any year may request a refund. The taxpayer may file either form M-500 (claim for refund), or an Amended Return for the year in question. The taxpayer shall clearly state the grounds upon which the refund request is made.

The request for refund must be submitted within three and one-half years after the return was filed, or within two years after the tax was paid, whichever is later. A return filed before the due date is considered as filed on the due date. Withholding and estimated tax payments before the return due date are considered as paid on the due date of the return.

If the claim relates to an overpayment on account of failure to deduct a loss due to a bad debt or due to a security becoming worthless, the refund request can be made at any time within seven years from the date the return was filed and the refund is limited to the amount of overpayment of tax due to this reason.

If the Commissioner and the taxpayer have agreed to an extension of time for assessment of tax beyond the period set forth in Minn. Stat. § 290.49, a claim for refund may be made at any time before six months after the extended date for assessment.

In the absence of a taxpayer's claim for refund, the Commissioner may, notwithstanding, refund any overpayment of tax provided such refund is ordered within the time during which a claim for refund would have been entertained.

In any case in which an overpayment of a taxpayer's tax liability is determined within the prescribed time as to any taxable year, the Commissioner may apply such overpayment as a credit against the taxpayer's outstanding income tax liability in any other year, remitting the balance (if any) to the taxpayer.

Chapter Eighteen: Penalties

INCT 1800 2053(1) Penalty and interest for failure to pay tax.

A. Five percent penalty for late payment of tax (the penalty is 10 percent for late payment of taxes becoming due after July 1, 1975).

In any case in which a taxpayer fails to pay a tax imposed under the provisions of the Act on or before the date such payment was due, a penalty of five percent of the unpaid tax shall be assessed, unless there has been an extension of time either to file the return or to pay the tax. Regarding extensions of time, see INCT 1514, INCT 1602, INCT 2206, and INCT 2227. If an extension of time has occurred and the tax was not paid as of the date of the expiration of the extension, the five percent late payment penalty will be assessed.

In the case of any tax which is to be paid in installments, as provided in Minn. Stat. § 290.45, subd. 1 (See INCT 1601), if the taxpayer fails to make payment of any installment on the date such installment becomes due, a penalty of five percent of the entire remaining unpaid installments shall be assessed.

In a case where the Commissioner determines and assesses a deficiency of tax and issues his order demanding payment, and neither payment is made, nor appeal taken to the Minnesota Tax Court within the period of 30 days after the issuance of the order, a penalty of five percent of the entire additional tax remaining unpaid at the expiration of the period shall be assessed. If the Minnesota Tax Court determines a deficiency, and payment is not made within 30 days after issuance of the Court's decision, a penalty of five percent of such deficiency shall be assessed.

The five percent penalty shall be collected as part of the tax.

B. Assessment of interest for late payment of tax. With the exception of automatic extensions of time for persons serving in the Armed Forces of the United States or of the United Nations (See INCT 1514, and INCT 2206, interest at the rate of six percent shall be assessed with respect to any unpaid tax imposed by this Act from the time the tax is due until the tax is paid, but for any taxes becoming due after July 1, 1975, the rate of interest is eight percent. If the tax is to be paid in installments as provided in Minn. Stat. § 290.45, Subd. 1 (See INCT 1601) and an install-

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ment becomes past due, interest shall accrue from the date prescribed for the payment of the installment until the installment is paid.

In a case where the Commissioner determines and assesses a deficiency of tax, and issues his order demanding payment, interest at the rate of six percent shall be assessed on the amount of the deficiency from the due date of the return to the date of the order demanding payment. No further interest shall be assessed if payment is made within 30 days of the date the order is issued.

Interest continues to accrue, following the Commissioner's order, if payment is not made within 30 days of the date the order is issued. If appeal is taken to the Minnesota Tax Court, interest continues to accrue until the Court's decision determining a deficiency is issued, and the taxpayer shall have 30 days thereafter in which to pay the deficiency without assessment of penalty or additional interest.

If any penalty is incurred (See INCT 1800), interest shall not only accrue with respect to the unpaid tax liability, but it shall also accrue with respect to the penalty from the date the penalty becomes due.

C. Effect of extension of time for filing a return or of time for payment. An extension of time for filing a return has the effect of extending the time for payment of any tax which may be due. A taxpayer who files his return on or before the due date may, however, be granted an extension of time for payment of the tax (See INCT 1602).

If the taxpayer files his return and pays his tax within the time allowed in his extension of time, no penalty shall be assessed (See INCT 1800). Even though an extension of time is granted, interest at six percent continues to accrue from the original due date to the date when payment is made. No interest is assessed, however, in the case of a serviceman who files his return within six months of the date he is released from military service. See INCT 1514 and INCT 2206.

INCT 1801 Failure to make and file return due to wilful neglect. A penalty for failure to file a return is imposed unless it is shown that such failure to file was not due to wilful neglect. The negligence penalty is in lieu of the five percent penalty for nonpayment. The rate of penalty is five percent of the tax if the failure to file is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which the failure continues, not exceeding 25 percent in the aggregate. The amount of tax on which the penalties are imposed shall be the amount of tax due from the taxpayer reduced by any amounts of tax paid on or before the date prescribed for payment and reduced by the amount of any credit against the tax which may be claimed upon the return.

Interest at the rate of six percent shall be assessed based upon the combined amount of tax and amount of penalties and computed from the time the tax was due until the date payment is made, but for taxes becoming due after July 1, 1975, the rate of interest is eight percent.

INCT 1802 Penalty for failure to file, filing false or fraudulent return; intent to evade tax. Where a taxpayer fails to file any return required by this Act or files a false or fraudulent return and in either case has the intention of evading the payment of tax, an amount equal to 50 per cent of the amount found to be due shall be added thereto and collected as part of the tax. This penalty is in addition to any other penalties and interest, whether civil or criminal, provided by Minn. Stat. § 290.53, except that if the 50 percent penalty is imposed, the penalty imposed by Minn. Stat. § 290.53, subdivision 3a will not apply.

INCT 1803 Negligence or intentional disregard of rules and regulations. If any part of an additional assessment is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), a penalty of five percent of such additional assessment will be imposed.

INCT 1804 Criminal penalties. The Act provides:

A. Any person who knowingly fails to make a return at the time required by law shall be guilty of a misdemeanor, and

B. Any person who wilfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he knows to be false and untrue as to any material matter, shall be guilty of a felony. As to the penalty on conviction of a felony or misdemeanor Minn. Stat. § 609.03 provides:

"(1) If the crime is a felony, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both . . ."

"(3) If the crime is a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than $300, or both . . ."

INCT 1805 Allocation of payments. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

INCT 1806 Abatement of penalties or interest. Under Minn. Stat. § 270.07 the Commissioner has power to abate penalties or interest when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the Attorney General if the abatement exceeds $500.

Applications for abatement will be considered upon receipt of a statement from the taxpayer setting forth the facts upon which such request for abatement is based.

Chapter Nineteen: Declaration of Estimated Tax by Individuals

INCT 1900 In general.

A. Requirement. A declaration of estimated income tax shall be made by a single individual if his gross income is in excess of $1,000 and by a married couple if their combined gross income is in excess of $1,800 providing that such gross income contains more than $500 of income from sources other than wages subject to Minnesota withholding under Minn. Stat. § 290.92 and the amount of such estimated tax can reasonably be expected to be $50 or more.

B. Wages. Any individual whose only source of income is wages subject to Minnesota withholding is not required to file a declaration of estimated tax. However if an individual receives wages not subject to Minnesota withholding (such as a salary paid to a resident of Minnesota by a Wisconsin employer for services performed in Wisconsin) such individual must file a declaration of estimated tax.

C. A parent does not include income of a minor child in his gross income in preparing his own estimated tax.

D. If the individual is an infant or incompetent person, the guardian shall have the responsibility of filing any declaration of estimated taxes required.

INCT 1901 Joint declaration by husband and wife.

A. In general. A husband and wife may make a joint declaration of estimated tax even though they are not living together. However, a joint declaration may not be made if they are separated under a decree of divorce or of separate maintenance. A joint declaration may not be made if the taxpayer's spouse is not a Minnesota resident, or if his spouse has a different taxable year. If the combined gross income of the married couple meets the requirements of Minn. Stat. § 290.93, Subd. 1, either a joint declaration must be made or a separate declaration must be made by each. If a joint declaration is made by husband and wife, the liability with respect to the estimated tax shall be joint and several.

B. Application to separate returns. The fact that a joint declaration of estimated tax is made by them will not preclude a husband and his wife from filing separate returns. In case a joint declaration is made but a joint return is not made for the same taxable year, the payments made on account of the estimated tax for such year may be treated as payments on account of tax liability of either the husband or wife for the taxable year or may be divided between them in such manner as they may agree. In the event the husband and wife fail to agree to a division, such payments shall be allocated between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax shown on the separate return of the taxpayer bears to the sum of the taxes shown on the separate returns of the taxpayer and his spouse.

C. Death of spouse.

1. A joint declaration may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse he may, in making a separate declaration for his taxable year which includes the period comprising such last taxable year of his spouse, estimate taxable income on an aggregate basis and compute his estimated tax in the same manner as though a joint declaration had been filed.

2. If a joint declaration is made by husband and wife and thereafter one spouse dies, no further payments of estimated tax on account of such joint declaration are required from the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax unless an amended declaration setting forth the separate tax for the taxable year is made by such spouse. Such separate estimated tax shall be paid at the times and in the amounts determined under the rules and prescribed in Minn. Stat. § 290.93, Subd. 6. For the purpose of such amended declaration by the surviving spouse, and allocating the payments made pursuant to the joint declaration may be divided between spouse and the legal representative of the decedent in the event a joint return is not filed, the payments made pursuant to th joint declaration may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree. In the event the surviving spouse and the legal representative of the decedent fail to agree to a division, such payments shall be allocated

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in accordance with the following rule. The portion of such payments to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax shown on the separate return of the surviving spouse bears to the sum of the taxes shown on the separate returns of the surviving spouse and of the decedent, and the balance of such payments shall be allocated to the decedent.

D. Signing of declaration. A joint declaration of a husband and wife shall be signed by both spouses or, if signed by one spouse as agent for the other, authorization must accompany the declaration. Both spouses, whether or not one acts as agent for the other, are responsible for making the declaration and incur liability for the penalties provided for erroneous, false, or fraudulent declarations.

INCT 1902 Definition. Estimated tax for an individual shall be defined as the sum of the taxes imposed under Minn. Stat. Chapter 290 for the specific taxable year less the estimated amounts of allowable credits against the tax under Minn. Stat. Chapter 290.

INCT 1903 Contents of declaration of estimated tax. In general. The declaration of estimated tax by an individual shall be made on Form M-14. For the purpose of making the declaration, the amount of gross income which the taxpayer can reasonably be expected to receive or accrue, depending upon the method of accounting upon which taxable income is computed, and the amount of the estimated allowable deductions and credits to be taken into account in computing the amount of estimated tax shall be determined upon the basis of the facts and circumstances existing as at the time prescribed for the filing of the declaration as well as those reasonably to be anticipated for the taxable year. If, therefore, the taxpayer is employed at the date prescribed for filing his declaration at a given wage or salary, it should, in the absence of circumstances indicating the contrary, be presumed by him for the purpose of the declaration that such employment will continue to the end of the taxable year at the wage or salary received by him as of such date. In the case of income other than wages and salary the regularity in the payment of income, such as dividends, interest, rents, royalties, and income arising from estates and trusts is a factor to be taken into consideration. Thus, if the taxpayer owns shares of stock in a corporation and dividends have been paid regularly for several years upon such stock, the taxpayer in the preparation of his declaration should, in the absence of information indicating a change in the dividend policy, include the prospective dividends from the corporation for the taxable year as well as those actually received in such year prior to the filing of the declaration. In the case of a taxpayer engaged in business on his own account, there shall be made an estimate of gross income and deductions and credits in the light of the best available information affecting the trade, business or profession.

INCT 1904 Time and place for filing.

A. Individuals other than farmers. Declarations of estimated tax for the calendar year shall be made on or before April 15th of such calendar year by every individual whose anticipated income for the year meets the requirements of Minn. Stat. § 290.93, Subd. 1. If, however, the requirements necessitating the filing of the declaration are first met, in the case of an individual on the calendar year basis, after April 1st, but before June 2nd of the calendar year, the declaration must be filed on or before June 15th; if such requirements are first met after June 1st and before September 2nd, the declaration must be filed on or before September 15th; and if such requirements are first met after September 1st, the declaration must be filed on or before January 15th of the succeeding calendar year. In the case of an individual on the fiscal year basis, see INCT 1906.

B. Farmers. In the case of an individual on a calendar year basis, whose estimated gross income from farming for the calendar year is at least two-thirds of his total estimated gross income from all sources for such year, his declaration may be filed on or before the 15th day of January of the succeeding calendar year in lieu of the time prescribed in paragraph A. For the filing of a return in lieu of a declaration, see INCT 1904. If an individual receives for the use of his land income in the form of a share of the crops produced thereon such income is from farming.

C. Place for filing declaration. The declaration of estimated tax shall be filed with the Commissioner of Revenue, St. Paul, Minnesota.

D. Amendment of declaration. An amended declaration of estimated tax may be filed during any interval between installment dates prescribed for the taxable year. However, no amended declaration may be filed until after the installment date on or before which the original declaration was filed only one amended declaration may be filed during each interval between installment dates. An amended declaration shall be filed with the Commissioner of Revenue, St. Paul, Minnesota.

In the making of a declaration of estimated tax, the taxpayer is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective gross income, allowable deductions and estimated credits for the taxable year. Amended or revised declarations may be made in any case in which the taxpayer estimates that his gross income, deductions, or credits will differ from the gross income, deductions, or credits reflected in the previous declaration. An amended declaration may also be made based upon a change in the number of exemptions to which the taxpayer may be entitled for the then current taxable year.

E. Return as declaration or amendment.

1. If the taxpayer files his return for the calendar year on or before January 31 (or March 1, in the case of an individual referred to in Minn. Stat. § 290.93, Subd. 5(2) relating to income from farming) of the succeeding calendar year (or if the taxpayer is on a fiscal year basis, on or before the last day of the first month (in the case of a farmer, the 1st day of the third month) immediately succeeding the close of such fiscal year), and pays in full the amount computed on the return as payable, then —

a. If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15 of the succeeding year (or the date corresponding thereto in the case of a fiscal year), such return shall be considered as such declaration; or

b. If a declaration was filed during the taxable year, such return shall be considered as the amendment of the declaration permitted by Minn. Stat. § 290.93, Subd 5(3) to be filed on or before January 15 of the succeeding year (or the date corresponding thereto in the case of a fiscal year).

For example, an individual taxpayer on the calendar year basis who, subsequent to September 1, 1974, first meets the requirements of Minn. Stat. § 290.93, Subd. 1 which necessitate the filing of a declaration for 1974, may satisfy the requirements as to the filing of such declaration by filing his return for 1974 on or before January 31, 1975 (March 1, 1975, in the case of a farmer) and paying in full at the time of such filing the tax shown thereon to be payable. Likewise, if a taxpayer files on or before September 15, 1974, a timely declaration for such year and subsequent thereto receives additional income requiring an amended declaration, the meeting of the requirements for filing such amended declaration can be made by filing his income tax return for 1974 and paying the full tax shown due by January 31, 1975.

2. For the purpose of Minn. Stat. § 290.93, Subd. 5(4) a taxpayer may file his return on or before the last day of the first month following the close of the taxable year even though he has not been furnished a Wage and Tax Statement by his employer. In such case the taxpayer shall compute, as accurately as possible, his wages for such year and the tax withheld for which he is entitled to a credit, reporting such wages and tax on his return, together with all other pertinent information necessary to the determination of his tax liability for such year. By availing himself of the provision set forth in this regulation a person does not eliminate the necessity for filing an amended return correcting any errors that may occur due to not having complete information at the time of filing the income tax return.

3. Compliance with the provisions of Minn. Stat. § 290.93, Subd 5(4) will enable a taxpayer to avoid the addition to the tax imposed by Minn. Stat. § 290.93, Subd. 10 with respect to an underpayment of the installment not required to be paid until January 15 of the succeeding calendar year (or the corresponding date in the case of a fiscal year). With respect to an underpayment of any earlier installment, compliance with Minn. Stat. § 290.93, Subd. 5(4) will not relieve the taxpayer from the addition to the tax imposed by Minn. Stat. § 290.93, Subd. 10. However, the period of the underpayment under Minn. Stat. § 290.93, Subd. 10(3), with respect to any earlier installment, will terminate on January 15 of the succeeding calendar year (or the corresponding date in the case of a fiscal year). For example, a taxpayer discovers on January 14, 1975, that he has underpaid his estimated tax for the calendar year 1974. He may, in lieu of filing an amended declaration on January 15, 1975 and paying the balance of the estimated tax determined thereon, file his final return on January 31, 1975, and pay in full the amount computed thereon as payable. By so doing he will avoid the addition to the tax with respect to the underpayment of the installment required to be paid by January 15, 1975. The periods of underpayment under Minn. Stat. § 290.93, Subd. 10(3), as to the installments required to be paid on April 15, 1974, June 15, 1974 and September 15, 1974, also terminate on January 15, 1975.

F. Extensions of time for filing declarations by individuals. In general. An application for an extension of time for filing a declaration shall be addressed to the Commissioner of Revenue, St. Paul, Minnesota and must contain a full recital of the causes for the delay. Except in the case of taxpayers who are abroad, no extension for filing declarations may be granted for more than six months.

INCT 1905 Time payment required. Payment of estimated tax as defined in Minn. Stat. § 290.93, Subd. 3, reflected on the declaration shall be made to the Commissioner of Revenue as follows:

A. If the amount of such estimated tax for the full year is $50 or less no payment is required.

B. If such declaration is filed by April 15 of the taxable year, it shall be paid in four equal installments, the first payment made at the time of filing the declaration, the second and third paid respectively on or before June 15 and September 15 of such taxable year and the final payment required on January 15 of the succeeding taxable year.

C. If such declaration is timely filed after April 15 but before June 15, the payments shall be made in three equal installments; the first payment made at the time of filing the declaration, the second payment on or before September 15 of such taxable year, and the final payment required on or before January 15 of the succeeding year.

D. If such declaration is timely filed after June 15 and before September 15, the payments shall be made in two equal installments; the first payment being made with the filing of the declaration and the second on or before January 15 of the succeeding year.

E. If the declaration including those referred to in Minn. Stat. § 290.93, Subd. 5(2) in relation to income from farming, is timely filed after September 15 of such taxable year the payment reflected on such declaration shall be made in full at the time such estimate is filed. (See INCT 1904 for use of income tax return to replace estimate to be filed by January 15 of the succeeding year).

F. If the individual meets the requirements for filing an estimated tax on or before a previous due date as set forth in Minn. Stat. § 290.93, Subd. 5, but fails to do so until a later due date the amount of estimate required to be paid would be the total amount due had such estimate been timely filed.

G. If any amendment of a declaration is filed, the remaining amount due, if any, shall be distributed over the remaining installments equally, and if made after September 15 of such taxable year the full amount remaining is to be paid at the time of filing such amendment.

H. Nothing in this regulation shall be meant to restrict the election of the individual to pay any or all installments prior to the date prescribed for such payment.

I. Such payments of estimated tax shall be considered as payments on account toward the liability of taxes imposed on such individual under Minn. Stat. Chapter 290.

J. Fiscal Year Taxpayer. The due dates for payment would correspond to due dates described under INCT 1906.

INCT 1906 Fiscal year or short taxable year.

A. Fiscal Year.

1. Individuals other than farmers. In the case of an individual on the fiscal basis, the declaration must be filed on or before the 15th day of the 4th month of the taxable year. If, however, the requirements of Minn. Stat. § 290.93, Subd. 1, are first met after the 1st day of the 4th month and before the 2nd day of the 6th month, the declaration must be filed on or before the 15th day of the 6th month of the taxable year. If such requirements are first met after the 1st day of the 6th month, and before the 2nd day of the 9th month, the declaration must be filed on or before the 15th day of the 9th month of the taxable year. If such requirements are first met after the 1st day of the 9th month, the declaration must be filed on or before the 15th day of the 1st month of the succeeding fiscal year. Thus, if an individual taxpayer has a fiscal year ending on June 30, 1975, his declaration must be filed on or before October 15, 1975, if the requirements of Minn. Stat. § 290.93, Subd. 1, are met on or before October 1, 1975. Other due dates would reflect similar corresponding dates compared to a calendar year taxpayer both for requirements of filing and payments due. That is, 2nd installment due date would be December 15, 1975. The 3rd installment due date would be March 15, 1976. And the final installment due date would be July 15, 1976.

2. Farmers. An individual on the fiscal year basis whose estimated gross income from farming is at least two-thirds of his total estimated gross income from all sources for such taxable year may file his declaration on or before the 15th day of the month immediately following the close of his taxable year or the individual described can elect to file his income tax return and pay all taxes shown due thereon by the 1st day of the 3rd month succeeding such taxable year.

B. Short taxable years of individuals.

1. Requirement of declaration. No declaration may be made for a period of more than 12 months. For purposes of Minn. Stat. § 290.93, Subd. 7 a taxable year of 52 or 53 weeks, in the case of a taxpayer who computes his taxable income in accordance with the election permitted by Minn. Stat. § 290.40(2) shall be deemed a period of 12 months. For the purpose of determining the effective date for the applicability of any provision of Minn. Stat. § 290.93 which is expressed in terms of taxable years beginning or ending with reference to the first or last day of a specified calendar month, including the time for filing returns and other documents, paying tax, or performing other acts, a 52-53 week taxable year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the 52-53 week taxable year, and is deemed to end or close on the last day of the calendar month ending nearest to the last day of the 52-53 week taxable year, as the case may be. A separate declaration for a fractional part of a year is required where, for example, there is a change, with the approval of the Commissioner, in the basis of computing taxable income from

one taxable year to another taxable year. The periods to be covered by such separate declarations in the several cases are those set forth in Minn. Stat. § 290.40. No declaration is required if the short taxable year is —

a. A period of less than four months,

b. A period of at least four months but less than six months and the requirements of Minn. Stat. § 290.93, Subd. 1 are first met after the 1st day of the fourth month,

c. A period of at least six months but less than nine months and the requirements of Minn. Stat. § 290.93, Subd. 1 are first met after the 1st day of the sixth month, or

d. A period of nine months or more and the requirements of Minn. Stat. § 290.93, Subd. 1 are first met after the 1st day of the ninth month.

In the case of a decedent, no declaration need be filed subsequent to the date of death. As to the requirement for amended declaration, if death of one spouse occurs after filing a joint declaration, see INCT 1901.

2. Income placed on annual basis. For the purpose of determining whether the anticipated income for a short taxable year resulting from a change of annual accounting period necessitates the filing of a declaration, such income shall be placed on an annual basis in the manner prescribed in Minn. Stat. § 290.32.

3. Individuals other than farmers. In the case of short taxable years the declaration shall be filed on or before the 15th day of the 4th month of such taxable year if the requirements of Minn. Stat. § 290.93, Subd. 1 are met on or before the 1st day of the 4th month of such year. If such requirements are first met after the 1st day of the 4th month but before the 2nd day of the 6th month, the declaration must be filed on or before the 15th day of the 6th month. If such requirements are first met after the 1st day of the 6th month but before the 2nd day of the 9th month, the declaration must be filed on or before the 15th day of the 9th month. If, however, the period for which the declaration is filed is one of 4 months, or one of 6 months and the requirements of Minn. Stat. § 290.93, Subd. 1 are not met until after the 1st day of the 4th month, or one of 9 months and such requirements are not met until after the 1st day of the 6th month, the declaration may be filed on or before the 15th day of the succeeding taxable year.

4. Farmers. In the case of an individual whose estimated gross income from farming for a short taxable year is at least two-thirds of his total estimated gross income from all sources for such taxable year, his declaration may be filed on or before the 15th day of the month immediately following the close of such taxable year.

INCT 1907 Underpayment.

A. In general.

1. Minn. Stat. § 290.93, Subd. 10 imposes an addition to the taxes under Minn. Stat. § 290.06 in the case of any underpayment of estimated tax by an individual (with certain exceptions described in Minn. Stat. § 290.93, Subd. 10(4)). This addition to the taxes is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment. The amount of the underpayment for any installment date is the excess of —

a. 70 percent (66⅔ percent in the case of individuals referred to in Minn. Stat. § 290.93, Subd. 5(2), relating to income from farming) of the tax shown on the return for the taxable year or, if no return was filed, 70 percent (66⅔ percent in the case of individuals referred to in Minn. Stat. § 290.93, Subd. 5(2) relating to income from farming) of the tax for such year, divided by the number of installment dates prescribed for such taxable year, over

b. The amount, if any, of the installment paid on or before the last day prescribed for such payment.

2. The amount of the addition is determined at the rate of 6 percent per annum upon the underpayment of any installment of estimated tax for the period from the date such installment is required to be paid until the 15th day of the fourth month following the close of the taxable year, or the date such underpayment is paid, whichever is earlier. (The rate is 8% for taxes becoming due after July 1, 1975). For purposes of determining the period of the underpayment

(1) the date prescribed for the payment of any installment of estimated tax shall be determined without regard to any extension of time, and

(2) a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under subparagraph 1. a. of this paragraph for such installment date, shall be considered a payment of any previous underpayment.

3. In determining the amount of the installment paid on or before the last day prescribed for payment thereof, the estimated tax shall be computed without

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any reduction for the amount which the taxpayer estimates as his credit under Minn. Stat. § 290.92, Subd. 12 (relating to tax withheld at source on wages), and the amount of such credit shall be deemed paid on each installment date (determined under Minn. Stat. § 290.93, Subd. 6) for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In the latter case, all amounts withheld shall be considered as payments of estimated tax on the dates such amounts were actually withheld. Under Minn. Stat. § 290.92, Subd. 12 the entire amount withheld during a calendar year is allowed as a credit against the tax for the taxable year which begins in such calendar year. However, where more than one taxable year begins in any calendar year no portion of the amount withheld during the calendar year will be treated as a payment of estimated tax for any taxable year other than the last taxable year beginning in such calendar year. The rules prescribed in this subparagraph for determining the time as of which the amount withheld shall be deemed paid are applicable even though such amount was withheld during a taxable year preceding that for which the credit is allowed.

4. The term "tax" when used in subparagraph 1. a. of this paragraph shall mean the tax imposed by Minn. Stat. Chapter 290 reduced by all credits allowed by that chapter except the credit provided by Minn. Stat. § 290.92, Subd. 12, relating to tax withheld at source on wages.

B. Statement relating to underpayment. If there has been an underpayment of estimated tax as of any installment date prescribed for its payment and the taxpayer believes that one or more of the exemptions described in INCT 1908 precludes the assertion of the addition to the tax under Minn. Stat. § 290.93, Subd. 10, he should attach to his income tax return for the taxable year, a schedule showing the applicability of any exception upon which he relies.

INCT 1908 Exceptions to imposition of the addition to the tax.

A. In general. The addition to the tax under Minn. Stat. § 290.93, Subd. 10 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the least of the following amounts —

1. The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a year of 12 months and a return showing a liability for tax was filed for such year;

2. The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to all allowable credits for the taxable year, but otherwise on the basis of facts shown on the return for the preceding taxable year and the law applicable to such year, in the case of an individual required to file a return for such preceding taxable year;

3. The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to 70 percent (66⅔ percent in the case of individuals referred to in Minn. Stat. § 290.93, Subd. 5(2), relating to income from farming) of the tax computed by placing on an annual basis the taxable income for the calendar months in the taxable year preceding such date. The taxable income shall be placed on an annual basis by —

a. Multiplying by 12 (or the number of months in the taxable year if less than 12) the taxable income (computed without the standard deduction and without deductions for personal exemptions), or the adjusted gross income if the standard deduction is to be used, for such calendar months,

b. Dividing the resulting amount by the number of such calendar months, and

c. Deducting from such amount the standard deduction, if applicable, and the deduction for personal exemptions (such personal exemptions being determined as of the date prescribed for payment); or

4. An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year preceding the date prescribed for payment.

In the case of a taxpayer whose taxable year consists of 52 or 53 weeks in accordance with Minn. Stat. § 290.40(2), the rules prescribed by INCT 1906 shall be applicable in determining for purposes of subparagraph 1. of this paragraph, whether a taxable year was a year of 12 months and, for purposes of subparagraphs 3. and 4. of this paragraph, the number of calendar months in a taxable year preceding the date prescribed for payment of an installment of estimated tax.

B. Meaning Of Terms. As used in this section and INCT 1909.

1. The term "tax" means the tax imposed by Minn. Stat. Chapter 290 reduced by the credits against tax allowed by such chapter, other than the credit against tax provided by Minn. Stat. § 290.92, Subd. 12 (relating to tax withheld on wages), and without reduction for any payments of estimated tax.

2. The term "return for the preceding taxable

year" means the income tax return for such year which is required by Minn. Stat. § 290.37.

C. Determination of Taxable Income For Installment Periods.

1. In general.

a. In determining the applicability of the exceptions described in paragraph A.3. and 4. of this section, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the determination is made, that is, for the period terminating with the last day of the third, fifth, or eighth month of the taxable year. For example, a taxpayer distributes year-end bonuses to his employees but does not determine the amount of the bonuses until the last month of the taxable year. He may not deduct any portion of such year-end bonuses in determining his taxable income for any installment period other than the final installment period for the taxable year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

b. If a taxpayer on an accrual method of accounting wishes to use either of the exceptions described in paragraph A.3. and 4. of this section, he must establish the amount of income and deductions for each applicable period. If his income is derived from a business in which the production, purchase, or sale of merchandise is an income-producing factor requiring the use of inventories, he will be unable to determine accurately the amount of his taxable income for the applicable period unless he can establish with reasonable accuracy, his cost of goods sold for the applicable installment period. The cost of goods sold for such period shall be considered, unless a more exact determination is available, as such part of the cost of goods sold during the entire taxable year as the gross receipts from sales for such installment period is of gross receipts from sales for the entire taxable year.

2. Members of partnerships. The provisions of this subparagraph shall apply in determining the applicability of the exceptions described in paragraph A.3. and 4. of this section to an underpayment of estimated tax by a taxpayer who is a member of a partnership.

a. There shall be taken into account —

(1) The partner's distributive share of partnership items set forth under Minn. Stat. 290.31, Subd. 2.

(2) The amount of any guaranteed payments under Minn. Stat. § 290.31, Subd. 7(4), and

(3) Gains or losses on partnership distributions which are treated as gains or losses on sales of property.

In determining a partner's taxable income for the months in his taxable year which precede the month in which the installment date falls, the partner shall take into account items set forth in Minn. Stat. § 290.31, Subd. 2 for any partnership taxable year ending with or within his taxable year to the extent that such items are attributable to months in such partnership taxable year which precede the month in which the installment date falls. In addition, a partner shall include in his taxable income for the months in his taxable year which precede the month in which the installment date falls guaranteed payments from the partnership to the extent that such guaranteed payments are includible in his taxable income for such months. See Minn. Stat. § 290.31, Subd. 6(1) and Subd. 7(4).

3. Beneficiaries of estates and trusts. In determining the applicability of the exceptions described in paragraph A.3. and 4. of this section as of any installment date, the benefiiciary of an estate or trust must take into account his distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during such period must be taken into account. If the taxable year of the benefiiciary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him as the case may be, during the months in the taxable year of the estate or trust ending within the taxable year of the beneficiary which precede the month in which the installment date falls.

D. Special rule in case of change from joint return or separate return for the preceding taxable year.

1. Joint return to separate return. In determining the applicability of the exceptions described in paragraph A.1. and 2. of this section to an underpayment of estimated tax, a taxpayer filing a separate return, who participated in the filing of a joint return for the preceding taxable year, shall be subject to the following rule. The tax —

a. Shown on the return for the preceding taxable year, or

b. Based on the tax rates and all credits allow-

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able under Minn. Stat. Chapter 290 for the taxable year but otherwise determined on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year, shall be that portion of the tax which bears the same ratio to the whole of the tax as the amount of tax for which the taxpayer would have been liable bears to the sum of the taxes for which the taxpayer and his spouse would have been liable had each spouse filed a separate return for the preceding taxable year.

2. Separate return to joint return. In the case of a taxpayer who participates in the filing of a joint return for the taxable year with respect to which there is an underpayment of estimated tax and who filed a separate return for the preceding taxable year —

a. The tax shown on the return for the preceding taxable year, for purposes of determining the applicability of the exception described in paragraph A.1. of this section, shall be the sum of both the tax shown on the return of the taxpayer and tax shown on the return of the taxpayer's spouse for such preceding year, and

b. The facts shown on both the taxpayer's return and the return of his spouse for the preceding taxable year shall be taken into account for purposes of determining the applicability of the exception described in paragraph A.2. of this section.

E. Combined form for filing separate returns. On individuals filing a combined return as defined under Minn. Stat. § 290.39, Subd. 2 the computation of underpayment would be made on the basis of the combined liability and the combined credits as allowed under Minn. Stat. Chapter 290.

INCT 1909 Short taxable years.

A. In general. The provisions of Minn. Stat. § 290.93, Subd. 10 with certain modifications which are explained in paragraph B. of this section, are applicable in the case of a short taxable year for which a declaration is required to be filed (See INCT 1906 for requirement of declaration for short taxable year).

B. Rules as to application of Minn. Stat. § 290.93, Subd. 10(4).

1. In any case in which the taxable year for which an underpayment of estimated tax exists in a short taxable year due to a change in annual accounting periods, in determining the tax —

a. Shown on the return for the preceding taxable year (for purposes of Minn. Stat. § 290.93, Subd. 10(4)) or

b. Based on the tax rates and all allowable credits for the current taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year. It is important to such consideration that certain credits such as the Senior Citizen Credits (freeze and income) under Minn. Stat. § 290.0601 through Minn. Stat. § 290.066; and Rent Credit under Minn. Stat. § 290.981 must be credited on a calendar year basis on December 31. For any short year the full credit allowable for calendar year credits listed above would be allowed if December 31 fell within the short year being filed. If the short period does not include the end of the calendar year within its measure, no allowance of these credits can be claimed.

The tax will be reduced by multiplying it by the number of months in the short taxable year and dividing the resulting amount by 12.

2. If the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in annualizing the income for the months in the taxable year preceding an installment date, for purposes of Minn. Stat. § 290.93, Subd. 10(4), the personal exemptions allowed as deductions under Minn. Stat. § 290.06, Subd. 3 (1)(2)(3) shall be reduced to the same extent that they are reduced under Minn. Stat. § 290.06, Subd. 3(6) in computing the tax for a short taxable year.

3. If "the preceding taxable year" referred to in Minn. Stat. § 290.93, Subd. 10(4)(b) was a short taxable year, the tax computed on the basis of the facts shown on the return for such preceding year for purposes of determining the applicability of the exception described in Minn. Stat. § 290.93, Subd. 10(4), shall be the tax computed on the annual basis in the manner described in Minn. Stat. § 290.32. If the tax rates or the taxpayer's status with respect to personal exemption for the taxable year with respect to which the underpayment occurs differ from such rates or status applicable to the preceding taxable year, the tax determined in accordance with the preceding sentence shall be recomputed to reflect the rates and status applicable to the year with respect to which the underpayment occurs.

Chapter Twenty: Declarations of Estimated Income Tax by Corporations

INCT 2000 Requirement of declaration. A declaration of estimated tax shall be made by every corporation which is subject to taxation under Minn. Stat. ch. 290, if its income tax under such chapter for the taxable year can reasonably be expected to exceed the sum of $1,000.

INCT 2001 Definition of estimated tax. The term "estimated tax" in the case of a corporation, means the excess of the amount which such corporation estimates as its income tax liability for the taxable year under Minn. Stat. ch. 290, over the sum of $1,000.

Example. C, a corporation subject to tax under Minn. Stat. ch. 290, reasonably anticipates an expected income tax of $1,500. Since C's expected tax ($1,500) exceeds the exemption ($1,000) a declaration of estimated tax is required to be filed reporting an estimated tax of $500 for the taxable year.

INCT 2002 Contents of declaration of estimated tax.

A. In general. The declaration of estimated tax by a corporation shall be made on Form M-18, and by a bank on Form M-20. For the purpose of making the declaration, the estimated tax should be based upon the amount of gross income which the taxpayer can reasonably be expected to receive or accrue, depending upon the method of accounting upon which the taxable income is computed, and the amount of the estimated allowable deductions to be taken into account. Such amounts of gross income and deductions should be determined upon the basis of facts and circumstances existing as at the time prescribed for the filing of the declaration as well as those reasonably to be anticipated for the taxable year.

B. Use of prescribed form. Copies of Form M-18 and M-20 will be furnished taxpayers. A taxpayer will not be excused from making a declaration, however, by the fact that no form has been furnished. Taxpayers not supplied with the proper form should make application therefor to the Department of Revenue in ample time to have their declarations prepared, verified, and filed with the department on or before the date prescribed for filing the declaration. If the prescribed form is not available a statement disclosing the estimated income tax after the exemption and the credits, if any, should be filed as a tentative declaration within the prescribed time, accompanied by the payment of the required installment. Such tentative declaration should be supplemented, without unnecessary delay, by a declaration made on the proper form and notice given at that time that a tentative declaration has been filed.

INCT 2003 Amendment of declaration. In the making of a declaration of estimated tax the corporation is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective gross income and allowable deductions for the taxable year. Amended or revised declarations may be made in any case in which the corporation estimates that its gross income or deductions will materially change the estimated tax reported in the previous declaration. Such amended declaration may be made on either Form M-18 or M-20 (marked "Amended") or on the reverse side of the installment notice Form M-19 furnished the corporation. See also INCT 2006.

INCT 2004 Short taxable year.

A. Requirement of declaration. No declaration may be made for a period of more than 12 months. For purposes of this section a taxable year of 52 or 53 weeks, in the case of a corporation which computes its taxable income in accordance with the election permitted by Minn. Stat. § 290.40, shall be deemed a period of 12 months. A separate declaration is required where a corporation is required to submit an income tax return for a period of less than 12 months.

B. Election of year consisting of 52-53 weeks. Minn. Stat. § 290.40 provides in general, that a taxpayer may elect to compute his taxable income on the basis of a fiscal year which varies from 52 to 53 weeks, ends always on the same day of the week, and ends always on whatever date this same day of the week last occurs in a calendar month, or whatever date this same day of the week falls which is nearest to the last day of the calendar month.

For the purpose of determining the effective date for the applicability of any provision of Minn. Stat. ch. 290 which is expressed in terms of taxable years beginning or ending with reference to the first or last day of a specified calendar month, including the time for filing returns and other documents, paying tax, or performing other acts, a 52-53-week taxable year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the 52-53-week taxable year, and is deemed to end or close on the last day of the calendar month ending nearest to the last day of the 52-53-week taxable year, as the case may be.

INCT 2005 Time and place for filing. A declaration of estimated tax required of a corporation by Minn. Stat. § 290.931 shall be filed as follows:

If the requirements of Minn. Stat. § 290.931 are first met—	The declaration shall be filed on or before—
before the 1st day of the 3rd month of the taxable year	the 15th day of the 3rd month of the taxable year
after the last day of the 2nd month and before the 1st day of the 6th month of the taxable year	the 15th day of the 6th month of the taxable year
after the last day of the 5th month and before the 1st day of the 9th month of the taxable year	the 15th day of the 9th month of the taxable year
after the last day of the 8th month and before the 1st day of the 12th month of the taxable year	the 15th day of the 12th month of the taxable year

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The declaration of estimated tax shall be filed with the commissioner of revenue at his offices in St. Paul, Minnesota.

INCT 2006 Amendment of declaration. In any case where a declaration of estimated tax for a taxable year has been filed, an amended declaration of estimated tax may be filed during any interval between installment dates prescribed for the taxable year. However, no amended declaration may be filed until after the installment date on or before which the original declaration was filed and only one amended declaration may be filed during each interval between installment dates. See INCT 2003 for the manner of making an amended declaration.

INCT 2007 Short taxable year.

A. In the case of a short taxable year of four or more months the declaration shall be filed on or before the application date specified in INCT 2005 or filed on or before the 15th day of the last month of the short taxable year if the requirements of Minn. Stat. § 290.931 are first met before the first day of such last month and the date specified in INCT 2005 as applicable is not within the short taxable year. See INCT 2004 relating to the requirement of a declaration in the case of a short taxable year and INCT 2011 relating to the time for payment of the estimated tax in case of a short taxable year.

B. Where a declaration of estimated tax for a short taxable year has been filed an amended declaration may be filed during any interval between installment dates. However, no amended declaration for a short taxable year may be filed until after the installment date on or before which the original declaration was filed and only one amended declaration may be filed during each interval between installment dates. For purposes of this subparagraph the term "installment date" includes the 15th day of the last month of a short taxable year if such 15th day does not fall on a prescribed installment date.

INCT 2008 Extension of time.

A. In general. The commissioner is authorized to grant a reasonable extension of time for filing a declaration or an amended declaration. An application by a corporation for an extension of time for filing such a declaration shall be addressed to the commissioner and must contain a full recital of the causes for the delay.

B. Addition to tax applicable. An extension of time granted to a corporation for filing a declaration of estimated tax automatically extends the time for paying the estimated tax (without interest) for the same period. However, such extension does not relieve the corporation from the addition to the tax imposed by Minn. Stat. § 290.934 and the period of the underpayment will be determined under Minn. Stat. § 290.934, subd. 3 without regard to such extension.

INCT 2009 Installment payments.

A. Amount and time for payment of each installment. Paragraphs (1) through (4) of Section 290.933, Subd. 1, contain four tables setting forth the percentages of estimated tax which shall be paid as installments of estimated tax and the date on or before which such installments shall be paid. The date on or before which the declaration of estimated tax for a taxable year is required under the provisions of Minn. Stat. § 290.932, Subd. 1, to be filed, determines which of the four installment payment tables shall be used by the corporation for that taxable year. Therefore, if the declaration is required to be filed by the 15th day of the 3rd, 6th, 9th or 12th month, the estimated tax will be required to be paid in four, three, two or one installment respectively.

B. Late filing of declaration of estimated tax. If a declaration of estimated tax is filed after the date prescribed by Minn. Stat. § 290.932, Subd. 1 (determined without regard to any extension of time for filing the declaration under Minn. Stat. § 290.932, Subd. 4), the tables set forth in paragraphs (2), (3), and (4) of Minn. Stat. § 290.933, Subdivision 1, do not apply except as provided in this regulation. In such a case, there shall be paid at the time of the filing of the declaration all installments of the estimated tax which would have been payable under the appropriate table in Minn. Stat. § 290.933, Subd. 1, on or before such date of filing if the declaration had been timely filed in accordance with the provisions of Minn. Stat. § 290.932, Subd. 1. The remaining installments shall be paid at the times and in the amounts in which they would have been payable if the declaration had been timely filed.

INCT 2010 Amendment of declaration. If any amendment of a declaration is filed, the amount of each remaining installment (including the installment due on the date of the filing of the amendment where the amendment is filed on an installment date), if any, is the amount which would have been payable as such installment if the new estimate had been the original estimate adjusted as provided in this regulation. The adjustment is for the difference between

A. the amount of estimated tax required to be paid before the date of the filing of the amendment and

B. the amount of estimated tax which would have been required to have been paid before such date if the new estimate had been the original estimate. The difference is divided by the number of remaining installments (including the installment due on the date of the filing of the amendment where the amendment is filed on an installment date), and the resulting amount is added to (if the amended declaration increases the amount of estimated tax) or subtracted from (if the amended declaration decreases the amount of the estimated tax) the amount which would have been payable on each remaining installment date if the new estimate had been the original estimate.

INCT 2011 Short taxable years. In the case of a short taxable year in respect of which a declaration of estimated tax is required to be filed (see paragraph A. of INCT 2007, the amount of, and time for payment of, each installment of estimated tax shall be determined by paragraph (1) to (4), inclusive, of Minn. Stat. § 290.933, Subdivision 1, except that in the case of a short taxable year, any estimated tax payable in installments which is not paid before the 15th day of the last month of the short taxable year (whether or not the date otherwise specified in Minn. Stat. § 290.933, Subd. 1 for payment has arrived) shall be paid on such 15th day of the last month of the short taxable year.

In the case of a declaration of estimated tax for a short taxable year, filed after the date prescribed by Minn. Stat. § 290.932, Subd. 1 (determined without regard to any extension of time for filing the declaration under Minn. Stat. § 290.932, Subd. 4), the provisions of paragraph B. of INCT 2009 shall be applied in determining the amount of and time for payment of each installment. However, in case of a short taxable year where under the provisions of paragraph B. of INCT 2009 installments are to be paid after the close of the short taxable year, such installments shall be paid on or before the 15th day of the last month of the short taxable year.

INCT 2012 Addition to the tax. Minn. Stat. § 290.934, Subd. 1, imposes an addition to the tax under Chapter 290 in the case of any underpayment of estimated tax made by a corporation (with certain exceptions described in Minn. Stat. § 290.934, Subd. 4). This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment.

INCT 2013 Period of underpayment.

A. The amount of the addition is determined at the rate of six percent per annum upon the underpayment of any installment of estimated tax for the period from the date such installment is required to be paid until the 15th day of the third month following the close of the taxable year, or the date such underpayment is paid, whichever is earlier. (The interest rate is eight percent for taxes becoming due after July 1, 1975.) For purposes of determining the period of the underpayment

1. the date prescribed for payment of any installment of estimated tax shall be determined without regard to any extension of time, and

2. a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under paragraph A. hereof for such date, shall be considered a payment of the previous underpayment, if any.

B. If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in Minn. Stat. § 290.934, Subd. 4, precludes the assertion of the addition to the tax it should attach to its income tax return for the taxable year a form M429-C showing the applicability of any exception upon which the taxpayer relies.

INCT 2014 Exceptions. The amount of the underpayment for any installment date is the excess of the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

A. The tax shown on the return of the corporation for the preceding taxable year reduced by $1,000 if a return showing liability for tax was filed for such year and such year was a taxable year of 12 months;

B. An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for and by law applicable to the preceding taxable year if such year was a taxable year of 12 months, over

C. The amount, if any, of the installment paid on or before the last day prescribed for such payment.

INCT 2015 Definition of tax. The term "tax" means the excess of the tax imposed by Minn. Stat. ch. 290 over the sum of $1,000.

INCT 2016 Short taxable year. In any case in which the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in determining the tax —

A. Shown on the return for the preceding taxable year (for purposes of Minn. Stat. § 290.934, Subd. 4(1));

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B. Based on the current year's rates but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year (for purposes of Minn. Stat. § 290.934, Subd. 4(2)); the tax will be reduced by multiplying it by the number of months in a short taxable year and dividing the resulting amount by 12.

If the preceding taxable year, referred to in Minn. Stat. § 290.934, Subd. 4(2), was a short taxable year the tax computed on the basis of the facts shown on the return for such preceding year for purposes of determining the applicability of the exception described in Minn. Stat. § 290.934, Subd. 4(2) shall be the tax computed on the annual basis in the manner described in Minn. Stat. § 290.32. If the tax rates for the taxable year with respect to which the underpayment occurs differ from the rates applicable to the preceding taxable year, the tax determined in accordance with the preceding sentence shall be recomputed using the rates applicable to the year with respect to which the underpayment occurs.

INCT 2017 Failure to file an estimate. If a corporation fails to file and pay a declaration of estimated tax when one is required, the period of the underpayment shall run from the four installment dates as set forth in Minn. Stat. § 290.933.

INCT 2018 Application of payment. Payments of estimated tax shall be considered payments on account of the income tax liability for the taxable year. Hence, the amount of estimated tax paid shall be entered on the income tax return and applied in payment of the tax liability shown thereon (a corporation may at its election pay any installment of its estimated tax in advance of the due date).

The commissioner, within the applicable period of limitations, may credit any overpayment of tax including interest thereon against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the taxpayer making the overpayment and the balance, if any, shall be refunded to such taxpayer by the commissioner. (See Minn. Stat. § 290.50.)

An income tax return shall, at the election of the taxpayer, constitute a claim for refund or credit of an overpayment disclosed by such return. Such claim shall be considered as filed on the date on which the return is considered as filed. An election to treat the return as a claim for refund or credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return is filed. If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated income tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year on the installments thereof. In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated income tax.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in this regulation.

Chapter Twenty-One: Small Business Corporations

INCT 2100 Definition of small business corporation.

A. In general. For purposes of Minn. Stat. § 290.971 through 290.975, the term "small business corporation" means a domestic corporation of the United States, which is not a member of an affiliated group of corporations, which does not have —

1. More than ten shareholders;

2. As a shareholder a person (other than an estate) who is not an individual;

3. A nonresident alien as a shareholder;

4. More than one class of stock

5. and has elected under the provisions of Section 1372(A) of the Internal Revenue Code of 1954, as amended, to be taxed as a small business corporation under the provisions of the Internal Revenue Code.

B. Domestic corporation. The term "domestic corporation of the United States," as used in Minn. Stat. § 290.971, Subd. 1, means a corporation as defined under section 7701(a)(3) of the Internal Revenue Code of 1954, as amended, created or organized in the United States or under the law of the United States or of any State or Territory.

C. Affiliated group. The term "affiliated group" as used in Minn. Stat. § 290.971, Subd. 1, shall have the same meaning as defined in section 1504(a) of the Internal Revenue Code of the United States, as amended.

D. Number of shareholders. A corporation does not qualify as a small business corporation if it has more than ten shareholders. Ordinarily, the persons who would have to include in gross income dividends distributed with respect to the stock of the corporation are considered to be the shareholders of the corporation. For example, if the stock is owned by tenants in

common, joint tenants or tenants by the entirety, each tenant in common, joint tenant, or tenant by the entirety is generally considered a shareholder, but see INCT 2102 relating to stock owned by husband or wife. Persons for whom stock in a corporation is held, by a nominee, agent, guardian or custodian, will generally be considered shareholders of the corporation. If stock is owned by a trust which is subject to the provisions of subchapters D, F, H, or J of Chapter 1 of the Internal Revenue Code of 1954, as amended, or by a voting trust, the trust is considered the shareholder, even though the dividends paid to the trust are includible directly in the income of the grantor or some other person. If stock is owned by a partnership, such partnership and not its partners is considered to be the shareholder.

E. Shareholders must be individuals or estates. A corporation in which any shareholder is a corporation, trust or partnership does not qualify as a small business corporation. Thus, even though the grantor is treated as the owner of all or any part of a trust, the corporation in which such trust is a shareholder does not meet the qualifications of a small business corporation.

F. No nonresident alien shareholders. A corporation, having as a shareholder an individual who is a nonresident alien (as defined by the Internal Revenue Code of 1954, as amended), does not qualify as a small business corporation.

G. Classes of stock. A corporation having more than one class of stock does not qualify as a small business corporation. In determining whether a corporation has more than one class of stock, only stock which is issued and outstanding is considered. Therefore, treasury stock and unissued stock of a different class than that held by the shareholders will not disqualify a corporation under Minn. Stat. § 290.971, Subd. 1(4). If the outstanding shares of stock of the corporation are not identical with respect to the rights and interest which they convey in the control, profits, and assets of the corporation, then the corporation is considered to have more than one class of stock. Thus, a difference as to voting rights, dividend rights, or liquidation preferences of outstanding stock will disqualify a corporation. However, if two or more groups of shares are identical in every respect except that each group has the right to elect members of the board of directors in a number proportionate to the number of shares in each group, they are considered one class of stock. Obligations which purport to represent debt, but which actually represent equity capital will generally constitute a second class of stock.

INCT 2101 Definition of electing small business corporation. Minn. Stat. § 290.971, Subd. 2 defines an electing small business corporation in terms of a particular taxable year. If a small business corporation, as defined in Minn. Stat. § 290.971, Subd. 1, has made an election under Minn. Stat. § 290.972, Subd. 1, and such election is in effect for the taxable year in question, then the corporation is an electing small business corporation for such taxable year. A corporation is not an electing small business corporation as to a particular taxable year if it was ineligible to make the election or if a termination under Minn. Stat. § 290.972, Subd. 5 is effective as to such taxable year.

INCT 2102 Stock owned by husband and wife. If stock is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a state, or owned by husband and wife as joint tenants, tenants by the entirety, or tenants in common, such stock shall be considered as owned by one shareholder.

INCT 2103 Ownership of certain stock.

A. Subsidiary corporation. Except as provided in INCT 2103B, a corporation which is a member of an affiliated group of corporations, as defined in section 1504 of the Internal Revenue Code of 1954, as amended, is not a small business corporation, whether or not such affiliated group has ever filed a consolidated return.

B. Inactive subsidiary. For purposes of Minn. Stat. § 290.971, Subd. 1, a corporation shall not be considered a member of an affiliated group at any time during a taxable year solely by reason of ownership of stock in another corporation, if the subsidiary corporation —

1. Has not begun business at any time on or after the date of its incorporation and before the close of such taxable year of the parent corporation, and

2. Does not have taxable income for the period of its taxable year which is included within such taxable year of the parent corporation.

INCT 2104 Election by small business corporation. Under Minn. Stat. § 290.972, a small business corporation, subject to the laws imposed by Minn. Stat. ch. 290, may elect not to be subject to the taxes imposed by Minn. Stat. § 290.02 and Minn. Stat. § 290.03. The qualifications of a small business corporation must be met as of the first day of the first taxable year of the corporation for which the election is to be effective

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and on the date of election, unless the election is made after such first day, in which case the qualifications need not exist prior to the date of election. For example, the existence of a corporate shareholder or a nonresident alien as a shareholder prior to the date of election does not preclude qualification. The election by a small business corporation is valid only if all the shareholders in the corporation on the first day of the first taxable year for which the election is to be effective, or on the date of election, whichever is later, consent to such election.

INCT 2105 Effect of election.

A. Effect on corporation. The effect on a small business corporation of a valid election under Minn. Stat. § 290.972 is to exempt such corporation from the taxes imposed by Minn. Stat. § 290.02 and Minn. Stat. § 290.03 with respect to taxable years of the corporation for which the election is in effect.

B. Effect on shareholders. The effect of a valid election by the corporation is to subject the shareholders to the provisions of Minn. Stat. § 290.973 (providing for the taxation of the corporation's taxable income to the shareholders) and to require that each shareholder shall include in his gross income for his taxable year in which or with which the taxable year of the corporation ends his pro rata share of the corporation's taxable income.

C. General rules. To the extent that other provisions of Minn. Stat. ch. 290 are not inconsistent with those under Minn. Stat. § 290.971 through 290.975, such provisions will apply with respect to both the electing small business corporation and its shareholders in the same manner that they would apply had no election been made.

INCT 2106 Manner and time for making election and filing shareholders' consent.

A. Manner and time of making election.

1. Manner. The election of a small business corporation should be made by the corporation by filing Form M-161 containing the information required by such form, and by filing, in the manner provided in INCT 2106(B) a statement of the consent of each shareholder of the corporation. The election form shall be signed by an officer of the corporation, or by any person authorized to sign by resolution of the corporation's board of directors, and shall be filed with the Commissioner at his office in St. Paul.

2. Time. The election shall be filed either

a. during the first month of the such taxable year, or

b. during the month preceding such first month. In the case of a new corporation whose taxable year begins after the first day of a particular month, the term "month" means the period commencing with the beginning of the first day of the taxable year and ending with the close of the day preceding the numerically corresponding day of the succeeding calendar month or, if there is no such corresponding day, with the close of the last day of such succeeding calendar month. For purposes of this subparagraph, the first month of the taxable year of a new corporation does not begin until the corporation has shareholders or acquires assets or begins doing business, whichever is the first to occur.

3. An election made prior to the expiration of the period for making the election is binding and may not be withdrawn even though the time within which the election could have been made has not elapsed.

B. Shareholders' consent.

1. In general. The consent of a shareholder to an election by a small business corporation shall be in the form of a statement signed by the shareholder in which such shareholder consents to the election of the corporation. Such shareholder's consent is binding and may not be withdrawn after a valid election is made by the corporation. The consent of a minor shall be made by the minor or by his legal guardian, or his natural guardian if no legal guardian has been appointed. The consent of an estate shall be made by the executor or administrator thereof. The statement shall set forth the name, address, and Minnesota identification number of the corporation, the name, address and social security number of the shareholder, the number of shares of stock held by the stockholder, him, and the date (or dates) on which such stock was acquired. The consents of all shareholders may be incorporated in one statement. The consents of all persons who are shareholders at the time the election is made shall be attached to the election of the corporation. If the election is made before the first day of the corporation's taxable year for which it is effective, the consents of persons who become shareholders after the date of election and are shareholders on such first day shall be filed with the Commissioner as soon as practicable after such first day. Where a consent is filed after the date of election, a copy of the consent shall also be filed with the return required to be filed under Minn. Stat. § 290.974. A consent will be considered timely if it is filed on or before the last day prescribed for making the election.

2. New shareholders. If a person becomes a shareholder of an electing small business corporation after the first day on which the election is made (if such day is later than the first day of the taxable year), the consent of such shareholder shall be made in a statement filed (with the Commissioner) within the period of 30 days beginning with the day on which such person becomes a new shareholder. A copy of such consent should be furnished to the corporation by the new shareholder. If the new shareholder is an estate, the

30-day period shall not begin until the executor or administrator has qualified under local law to perform his duties, but in no event shall such period begin later than 30 days following the close of the corporation's taxable year in which the estate became a shareholder. The statement of consent shall set forth the name, address, and Minnesota identification number of the corporation, the name, address and social security number of such new shareholder, the number of shares of stock owned by such shareholder, the date on which such shares were acquired, and the name, address and social security number of each person from whom such shares were acquired. A copy of the consent of such new shareholder shall be filed with the return required to be filed, under Minn. Stat. § 290.974 for the taxable year to which such consent applies. For the effect of the failure of a new shareholder to consent, see paragraph B.1. of INCT 2108.

C. Extension of time for filing consents. An election which is timely filed for any taxable year and which would be valid, or would not have terminated, except for the failure of any shareholder to file a consent within the time prescribed in INCT 2106A. and INCT 2106B. will not be invalid, or will not be treated as having terminated, for such reason if —

1. It is shown to the satisfaction of the Commissioner that there was reasonable cause for the failure to file such consent and that the interests of the State of Minnesota will not be jeopardized by treating such election as valid, or as not having terminated,

2. Such shareholder files a proper consent to the election within such extended period of time as may be granted by the Commissioner, and

3. New consents are filed within such extended period of time as may be granted by the Commissioner, by all persons who were shareholders of the corporation at any time during the taxable year with respect to which the failure to consent would (but for the provisions of this paragraph) cause the corporation's election to be invalid or to terminate, and by all persons who were shareholders of the corporation subsequent to such taxable year and prior to the date on which an extension of time is granted in accordance with this paragraph.

D. Retroactive election.

1. In general. A small business corporation, subject to the laws imposed by Minn. Stat. Chapter 290, and which has elected under the provisions of section 1372(A) of the Internal Revenue Code of 1954, as amended, to be taxed as a small business corporation under the provisions of said Internal Revenue Code of 1954, as amended, but due to sickness, absence, other disability or other good cause, as determined by the Commissioner, has not elected under Minn. Stat. § 290.972, Subd. 1 within the time limits prescribed by INCT 2104, may have the time limits extended as provided in INCT 2106D.2.

2. Manner. A small business corporation, not having elected under Minn. Stat. § 290.972, Subd. 1, and coming within the provisions of INCT 2106D.1., may apply for extension of time for election, if application is made within the twelve (12) month period following the close of the taxable year for which the election is sought. The extension will be granted and the retroactive election will be allowed if —

a. Documentary evidence of an election under section 1372(a) of the Internal Revenue Code of 1954, as amended, is filed and

b. Consents are filed by all persons who were shareholders at any time from the start of the taxable year for which election is sought, to the date of application for extension, and

c. It is shown to the satisfaction of the Commissioner that there was reasonable cause for the failure to file such election and that the interests of the State of Minnesota will not be jeopardized by granting such election.

INCT 2107 Years for which effective. An election is effective for the entire taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated with respect to any taxable year. Thus, the election has a continuing effect and need not be renewed annually.

INCT 2108 Termination of election.

A. In general. An election under Minn. Stat. § 290.972, Subd. 1 can be terminated in any one of the five ways described in Minn. Stat. § 290.972, Subd. 5 and paragraph B. of this section. For years affected by termination, see paragraph C. of this section.

B. Methods of termination.

1. Failure of new shareholder to consent. An election under Minn. Stat. § 290.972, Subd. 1 shall terminate if any person who was not a shareholder on the first day of the first taxable year for which the election is effective, or on the day on which the election is made (if such day is later than the first day of the taxable year), becomes a shareholder and does not consent to

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the election under Minn. Stat. § 290.972, Subd. 1 within the time prescribed by paragraph 2.B. of INCT 2106. However, see paragraph C. of INCT 2106 for extensions of time for filing consents.

2. Revocation. An election under Minn. Stat. § 290.972, Subd. 1, may be revoked by the corporation for any taxable year of the corporation after the first taxable year for which the election is effective. A revocation can be made only with the consent of all the persons who are shareholders at the beginning of the day of revocation. Such revocation shall be made by the corporation by filing a statement that the corporation revokes the election made under Minn. Stat. § 290.972, Subd. 1, and the statement shall indicate the first taxable year of the corporation for which the revocation is intended to be effective. The statement shall be signed by any officer of the corporation or by any person authorized by resolution of the corporation's board of directors, and shall be filed with the Commissioner at his office in St. Paul. In addition, there shall be attached to the statement of revocation a statement of consent, signed by each person who is a shareholder of the corporation at the beginning of the day on which such statement of revocation is filed, in which each shareholder consents to the revocation by the corporation of the election under Minn. Stat. 290.972, Subd. 1. For the time within which a revocation must be made to be effective for a particular taxable year of the corporation, see paragraph C. of this section.

3. Ceases to be small business corporation. An election under Minn. Stat. § 290.972, Subd. 1 terminates if at any time after the first day of the first taxable year of the corporation for which the election is effective, or after the day on which the election is made (if such day is later than the first day of the taxable year), the corporation ceases to be a small business corporation, subject to the laws imposed by Minn. Stat. Chapter 290, and as defined in Minn. Stat. § 290.971, Subd. 1. Thus, the election is terminated if an eleventh person, a nonresident alien, or a trust, partnership, or corporation becomes a shareholder, or if another class of stock is issued by the corporation, or if the election granted under section 1372(A) of the Internal Revenue Code of 1954, as amended, is terminated or revoked, or if the corporation ceases to be subject to the laws imposed by Minn. Stat. ch. 290. In the event of a termination under this subparagraph the corporation shall immediately notify the Commissioner. Such notification shall set forth the cause of the termination and the date thereof. In addition, if the termination was caused by the transfer of stock to an eleventh shareholder, to a nonresident alien, or to a trust, partnership or corporation, the notification shall specify the number of shares transferred to such person, the name of such person (or in the case of a trust the names of the trustees and beneficiaries), and the name of the shareholder who transferred such stock to such person. If the termination was caused by the issuance of a second class of stock, the notification shall indicate the number of shares of such new class issued and shall describe the differentiating characteristics of the new class of stock.

4. Foreign income. An election terminates if for any taxable year of the corporation the corporation has gross receipts, more than 80 percent of which are derived from sources outside the United States. For meaning of the term "gross receipts", see subparagraph 5.b. of this Regulation. In determining the source of gross receipts under Minn. Stat. § 290.972, Subd. 5(4), the principles of Part I (section 861 and following), subchapter N, chapter 1 of the Internal Revenue Code of 1954, as amended, relating to determination of sources of gross income, shall apply.

5. Personal holding company income.

a. In general, an election shall terminate if for any taxable year of the corporation the corporation has gross receipts more than 20 percent of which is derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities, as determined in accordance with the rules of this subparagraph.

b. Gross receipts. The term "gross receipts" as used in Minn. Stat. § 290.972, Subd. 5 is not synonymous with "gross income." The test under Minn. Stat. § 290.972, Subd. 5(4) and (5) shall be made on the basis of total gross receipts, except that, for purposes of Minn. Stat. § 290.972, Subd. 5(5), gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom. The term "gross receipts" means the total amount received or accrued under the method of accounting used by the corporation in computing its taxable income. Thus, the total amount of receipts is not reduced by returns and allowances, cost of sales, or deductions. For example, gross receipts will include the total amount received or accrued during the corporation's taxable year from the sale or exchange (including a sale or exchange to which Minn. Stat. § 290.135, Subd. 2 applies) of any kind of property, from investments, and for services rendered by the corporation. However, gross receipts does not include amounts received in non-taxable sales or exchanges (other than those to which Minn. Stat. § 290.135, Subd. 2 applies), except to the extent that gain is recognized by the corporation, nor does that term include amounts received as a loan, as a repayment of a loan, as a contribution to capital, or on the issuance by the corporation of its own stock.

c. Royalties. The term "royalties" as used in Minn. Stat. § 290.972, Subd. 5(5) means all royalties, including mineral, oil and gas royalties (whether or not the aggregate amount of such royalties constitute 50 percent or more of the gross income of the corporation for the taxable year), and amounts received for the privilege of using patents, copyrights, secret pro-

cesses and formulas, good will, trademarks, trade brands, franchises, and other like property. For purposes of this division, the gross amount of royalties shall not be reduced by any part of the cost of the rights under which they are received or by any amount allowable as a deduction in computing taxable income.

d. Rents. The term "rents" as used in Minn. Stat. § 290.972, Subd. 5(5) means amounts received for the use of, or right to use, property (whether real or personal) of the corporation, whether or not such amounts constitute 50 percent or more of the gross income of the corporation for the taxable year. The term "rents" does not include payments for the use or occupancy of rooms or other space where significant services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist homes, motor courts, or motels. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space, for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, the collection of trash, etc., are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, of offices in an office building, etc., are generally "rents" under Minn. Stat. § 290.972, Subd. 5(5). Payments for the parking of automobiles ordinarily do not constitute rents. Payments for the warehousing of goods or for the use of personal property do not constitute rents if significant services are rendered in connection with such payments.

e. Dividends. The term "dividends" as used in Minn. Stat. § 290.972, Subd. 5(5) means dividends as defined in Minn. Stat. § 290.133, Subd. 1.

f. Interest. The term "interest" as used in Minn. Stat. § 290.972, Subd. 5(5) means any amounts received for the use or forbearance of money (including any interest that is exempt from taxation under Chapter 290).

g. Annuities. The term "annuities" as used in Minn. Stat. § 290.972, Subd. 5(5) means the entire amount, received as an annuity under an annuity, endowment, or life insurance contract, regardless of whether only part of such amount would be excluded from gross income under Minn. Stat. § 290.08, Subd. 4.

h. Gross receipts from the sale of stock or securities. For purposes of Minn. Stat. § 290.972, Subd. 5(5), gross receipts from the sales or exchanges of stock or securities are taken into account only to the extent of gains therefrom. Thus, the gross receipts from the sale of a particular share of stock will be the excess of the amount realized over the adjusted basis of such share. If the adjusted basis should equal or exceed the amount realized on the sale or exchange of a certain share of stock, bond, etc., there would be no gross receipts resulting from the sale of such security. Losses on sales or exchanges of stock or securities do not offset gains on the sales or exchanges of stock or securities for purposes of computing gross receipts from such sales or exchanges. Gross receipts from the sale or exchange of stocks and securities include gains received from such sales or exchanges by a corporation even though such corporation is a regular dealer in stocks and securities.

C. Years affected by termination. The termination of an election resulting from the occurrences described in subparagraphs 1., 3., 4., or 5. of paragraph B. of this section is effective for the taxable year of the corporation in which occur the events causing the termination and for all succeeding taxable years of the corporation. Thus, if an electing small business corporation which is on a calendar year ending December 1, 1972, should issue a second class of stock on December 31, 1972, the election under Minn. Stat. § 290.972, Subd. 1, would terminate as of January 1, 1972, and the termination would remain in effect for all future years unless and until a new election is made by the corporation. Generally, a termination by revocation described in paragraph B. 2. of this section is effective for the taxable year in which it is made and for all subsequent taxable years if it is made during the first month of that year. However, a termination by revocation cannot be made effective for the first taxable year of the corporation for which the election is made. If the revocation is not made during the first month of a taxable year, it is effective for the taxable year following the year in which it is made, and for all subsequent years.

INCT 2109 Election after termination.

A. In general. If a corporation has made a valid election and such election has been terminated, such corporation (or any successor corporation) is not eligible to make a new election for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination is effective, unless consent to such new election is given by the Commissioner. The burden will be on the corporation to establish that under the relevant facts the Commissioner

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should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation during the first taxable year for which the termination is applicable will tend to establish that consent should be granted. In the absence of such fact, consent will ordinarily be denied unless it can be shown that the event causing the termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation, and was not part of a plan to terminate the election in which plan such shareholders participated.

B. Successor corporation. The term "successor corporation" as used in Minn. Stat. § 290.972, Subd. 6 means any corporation —

1. 50 percent or more of the stock of which is owned, directly or indirectly, by the same persons who, at any time during the first taxable year for which such termination was effective, owned 50 percent or more of the stock of the small business corporation with respect to which the election was terminated, and

2.

a. which acquires a substantial portion of the assets of such small business corporation, or

b. A substantial portion of the assets of which were assets of such small business corporation.

INCT 2110 Corporation taxable income taxed to shareholders.

A. In general. Each person who is a shareholder of an electing small business corporation on the last day of a taxable year of such corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, his pro rata share of the corporation's taxable income for such year, as determined under INCT 2106.

B. Taxable income defined. For purposes of this section, the term "taxable income" means the taxable net income of the small business corporation, computed as though said corporation were a partnership. However, this computation shall not result in the exclusion of any class of income taxable to the corporation under the provisions of Chapter 290, and, shall not result in the exclusion of any income properly taxed to shareholders under Minn. Stat. § 290.01, Subd. 20.

C. Modifications. Individual shareholders of an electing small business corporation, under Minn. Stat. § 290.972, Subd. 1, shall make adjustments to income reported, under Minn. Stat. § 290.01, Subd. 20, in the following situations:

1. Where the electing corporation has sustained capital gains during the taxable year and the adjusted basis of such capital assets is different for state and federal purposes, appropriate adjustment shall be made in conformance with the provisions of Minn. Stat. § 290.01, Subd. 20(B)(2).

2. Where the business of the corporation is carried on both within and without Minnesota, proper allocation of corporate income or loss attributable to shareholders shall be made under the provisions of Minn. Stat. § 290.17, 290.18 and 290.19.

3. Where the corporation has deducted income taxes paid to the State of Minnesota or other taxing jurisdiction, or has included in income refund therefrom;

4. Where the election under 1372(A) of the Internal Revenue Code antedates election under Minn. Stat. § 290.972, Subd. 1, appropriate adjustment must be made under the provisions of Minn. Stat. § 290.01, Subd. 20(C)(2).

INCT 2111 Treatment of family groups.

A. General. Any amount taxable to a shareholder of a small business corporation, under INCT 2110 may be apportioned or allocated by the Commissioner between or among shareholders of such corporation who are members of such shareholder's family, if he determines that such apportionment or allocation is necessary in order to reflect the value of services rendered to the corporation by such shareholders. In determining the value of services rendered by a shareholder, consideration shall be given to all the facts and circumstances of the business, including the managerial responsibilities of the shareholder, and the amount that would ordinarily be paid in order to obtain comparable services from a person not having an interest in the corporation.

B. Family defined. For purposes of INCT 2111, the family of an individual shall include brothers and sisters, (both whole and half-blood), spouse, ancestor and lineal descendants.

INCT 2112 Return of electing small business corporation.

A. In general. A corporation, electing as a small business corporation under the provisions of Minn. Stat. § 290.972, Subd. 1, shall file a partnership return, for each taxable year that the election is in effect.

B. Information required. The return shall be filed on Form M-3S-4, and shall include the following information.

1. Name, address and social security number of all persons owning stock during the taxable year;

2. Number of shares of stock held by each shareholder at all times during the year;

3. The date the election was made under section 1372(A) of the Internal Rvenue Code;

4. The date election was made under Minn. Stat. § 290.972, Subd. 1; and

5. Minnesota identification number

C. Statute of limitations. Any return filed, pursuant to the provisions of Minn. Stat. § 290.972, shall be treated as a return filed by a partnership, for the purposes of the statute of limitations. However, if election under Minn. Stat. § 290.972, Subd. 1, is terminated for taxable year for which return is filed, see subparagraph D. of INCT 2112.

D. Corporate return. The Form M-3S-4, filed by a corporation, which has not elected under the provisions of Minn. Stat. § 290.972, Subd. 1, or, has terminated its election under the provisions of Minn. Stat. § 290.972, Subd. 5, shall be treated as a corporate return, required by Minn. Stat. § 290.37, Subd. 1(m) and shall be deemed an assessment under Minn. Stat. § 290.39, subject to the revision of tax shown due.

E. Verification. The return filed under the provisions of Minn. Stat. § 290.974 shall be signed by an officer of the corporation.

INCT 2113 Classification of income. In the event an individual must include in his income for federal income tax purposes, an amount computed under sections 1373 and 1375 of the Internal Revenue Code of 1954, as amended, because of his ownership of stock in a corporation which has elected small business status under section 1372(A) of the Internal Revenue Code of 1954, as amended, then such income shall also be considered income under Minn. Stat. ch. 290, provided that the corporation, of which the individual is a shareholder, has made an election as a small business corporation under the provisions of Minn. Stat. § 290.972, Subd. 1.

Chapter Twenty-Two: Miscellaneous

INCT 2200 Agreements as to tax due. At any time within the applicable period of limitations, the taxpayer and the Commissioner, or his representative authorized in writing, may enter into an agreement in writing as to the amount of tax due for any taxable year or years. If such agreement is thereafter approved by the Commissioner, it shall be final and conclusive and it shall not be set aside except upon a showing of fraud or malfeasance or misrepresentation of a material fact.

INCT 2201 Attorneys and agents. Any representative of a taxpayer may appear before the Income Tax Division providing that such representative files a written power of attorney, Form 184 or an equivalent form executed by the taxpayer involved or is accompanied by the taxpayer himself.

In case of a formal hearing before the Commissioner of Revenue, persons who may appear are set forth as follows:

A. Attorneys at law duly licensed to practice law in the State of Minnesota.

B. Certified Public Accountants, Public Accountants, and Agents provided that the practice by accountants or agents shall be limited to problems not constituting the practice of law.

C. Individuals may appear at all times in their own behalf or partners may appear on behalf of their partnership or a corporation's officers may appear on behalf of their corporation. Nothing herein will prevent the suspension or disbarment by the Commissioner of Revenue of any attorney, agent, or any other person from acting on behalf of any taxpayer either before the Commissioner or the Income Tax Division in accordance with the provisions of Minn. Stat. § 290.52.

INCT 2202 Examiners. The Commissioner of Revenue may appoint such persons as he deems necessary to review income tax returns and to make determinations concerning income tax liabilities.

INCT 2203 Secrecy — tax department employees. Disclosure of information obtained in reviewing a taxpayer's tax liability may not be made except as provided in Minn. Stat. § 290.61. Violation is a gross misdemeanor.

INCT 2204 Secrecy — tax consultants. Disclosure of information obtained in preparing or reviewing a taxpayer's state or federal income tax return may not be made except as provided in Minn. Stat. § 290.611. Violation is a gross misdemeanor.

INCT 2205 Armed forces exclusion. The first $3,000 of income from services performed in the armed forces of the United States or of the United Nations is excluded from gross income. In addition, the next $2,000 of income from such services wholly performed outside of the state of Minnesota is excluded from gross income.

INCT 2206 Extension of time — armed forces. A member of the Armed Forces who serves continuously for a period of more than 90 days outside the United

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States is granted an extension of time until six months after his return to the United States for the filing of returns, payment of taxes, and the claiming of refunds. In addition, the individual who serves in the Armed Forces within or outside of the United States is granted an extension of time until six months after termination of military services if his ability to perform these acts is materially impaired by reason of these services. Such impairment need not be shown but it is presumed to exist during the period of military service.

INCT 2207 Extension of time — civilians outside of United States. An individual who is continuously and for more than 90 days outside of the United States is granted an extension of time until six months after his return to the United States within which to file his return, pay his taxes, or claim his refund. No penalty will be assessed for period prior to six months after his return to the United States. Interest at the rate of six percent per annum will be assessed for periods after the due date of the return under Minn. Stat. § 290.42. The Commissioner of Revenue may abate penalties and interest when in his opinion enforcement would be unjust and inequitable.

In the case of a refund, no interest will be payable for the period up to six months after the taxpayer's return to the United States. A tax may be assessed within the period of months following the date six months after the taxpayer's return to the United States, or 12 months after the taxpayer's return.

INCT 2208 Outside the United States. An individual is outside of the United States if he is outside of the 50 states and the District of Columbia.

INCT 2209 Death of member of armed forces. If an individual dies on or after December 31, 1949 while in active service as a member of the Armed Forces of the United States or of any of the United Nations, no tax shall be assessed for the taxable year in which he died, and any unpaid tax for any years prior to his death shall be cancelled. Also, if he had paid any tax for any taxable year beginning after December 31, 1949 during which he was in active service, such tax shall be refunded provided a claim for refund is filed within seven years of the date on which the return for that year was filed. Such claim can only be filed by the executor or administrator of his estate, and refund can be paid only to such legal representative of the estate.

INCT 2210 Common trust fund. A common trust fund as defined in Minn. Stat. § 290.281 is not subject to any income tax.

Federal law controls in the determination of the amount of income which is attributed to individual participants in a common trust fund, subject to the modifications that are required under the provisions of Minn. Stat. § 290.01, Subd. 20 and Minn. Stat. § 290.17 - 290.20 (inclusive). See Section 584 of the Internal Revenue Code of 1954, as amended.

INCT 2211 Liability of transferees and fiduciaries. The amount for which a transferee of the property of a taxpayer is liable, at law or in equity, and the amount of the personal liability of a fiduciary in respect of any income tax imposed by the Act, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by the Act, except as hereinafter provided.

The term "transferee" as used in this regulation includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in Minn. Stat. § 290.136, subd. 9 and all other classes of distributees.

The period of limitation for assessment and collection of the liability of a transferee or of a fiduciary, referred to in the first paragraph of this regulation, is as follows:

A. In the case of the liability of an initial transferee of the property of the taxpayer one year after the expiration of the period of limitation for assessment against the taxpayer. Action may be brought for the collection of such liability within one year after the expiration of the period of limitation for the commencement of the action against the taxpayer.

B. In the case of the liability of a transferee of a transferee of the property of the taxpayer one year after the expiration of the period of limitation for assessment against the preceding transferee, or three and one-half years after the expiration of the period of limitations for assessment against the taxpayer, whichever of the two periods (the one-year period or the three and one-half-year period) first expires. In such case the liability may be collected by action brought within one year after the expiration of the period of limitation for the commencement of the action against that preceding transferee but only if within four years after the expiration of the period of limitation for bringing an action against the taxpayer.

C. If a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the bringing of such proceeding, then the period of limitation shall expire within one year after the return of execution in such proceeding. The period of limitation for collection by action expires one year after the said liability is assessed.

D. In the case of the liability of a fiduciary, not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later. The liability may be collected by action brought within one year after assessment.

E. For the purpose of determining the period of limitation for assessment against a transferee or a fiduciary, if the taxpayer is deceased, or, in the case of a corporation, if it has terminated its existence, the period of limitation of assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

INCT 2212 Duties of fiduciaries. As soon as the Commissioner receives notice that a person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to income tax imposes by Minn. Stat. § 290.03(3) and (4). If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in Minn. Stat. § 290.29, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in Minn. Stat. § 290.29. The "notice to the Commissioner" provided for in Minn. Stat. § 290.30 shall be written notice signed by the fiduciary and filed with the Commissioner. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and, if so, the year or years involved, or a liability at law or equity of a transferee of property or a taxpayer, or a liability of a fiduciary in respect of the payment of any tax from the estate of the taxpayer. Any such written notice which has been filed with the Commissioner shall be considered as sufficient notice to the Commissioner within the meaning of Minn. Stat. § 290.30. Unless there is already on file with the Commissioner satisfactory evidence of the authority of the fiduciary to act for such person in a fiduciary capacity, such evidence must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

If the notice of the fiduciary capacity described in the preceding paragraph is not filed with the Commissioner prior to the sending of notice of a deficiency by registered mail to the last known address of the taxpayer, or the last known address of the transferee or other person subject to liability (see Minn. Stat. § 290.29), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be sufficient compliance with the requirements of the Act, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. This constitutes formal assessment of the tax and recourse from such order is to take an appeal directly to the Tax Court in accordance with the provisions of Minn. Stat. § 271.06. The term "fiduciary" is defined to mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

This regulation, relating to the provisions of Minn. Stat. § 290.30 shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the Act.

INCT 2213 Returns by insurance companies. Insurance companies (other than farmers' mutual) doing business in Minnesota must file income tax returns. Farmers' mutual insurance companies organized and existing under Minnesota law are exempt under Minn. Stat. § 290.05, subd. 1(c), and these companies need not file returns.

Insurance companies, other than life insurance companies, prepare their income tax returns on forms M-4 and M-6. Life insurance companies prepare their returns on form M-7.

Insurance companies report as net income the amount of net income which they would have been required to report under the federal Revenue Act of 1936, if that Act were still in effect. Net income is apportioned to Minnesota by multiplying the total net income by the ratio of the gross premiums from business within the state to total gross premiums from all business everywhere. Premium taxes paid to the state of Minnesota were deducted in arriving at net income under the federal Revenue Act of 1936 — the amount of these

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taxes is added to the apportioned net income figure to arrive at Minnesota taxable net income. (Exception: The premium tax surcharge imposed by Minn. Stat. § 69.54 is not so added to the apportioned net income figure.)

The $500 corporation credit under Minn. Stat. § 290.21 is then subtracted from the Minnesota taxable net income figure, and the corporation tax rates under Minn. Stat. § 290.06 are then applied to determine the amount of taxes that are due. Insurance companies are allowed a specific credit against their taxes due of the amount of premium taxes they paid to Minnesota, other than the premium tax surcharge imposed by Minn. Stat. § 69.54. See Minn. Stat. § 290.06, subd. 3(c)(5).

INCT 2214 Taxation of national and state banks. In general, the determination of net income and credits for national and state banks is the same as that for any corporation subject to tax under Minn. Stat. § 290.02 of the Minnesota Income and Franchise Tax Act. Banking corporations subject to the provisions of this Act must make a return on Form M-8.

Returns must be filed for the same accounting period as is employed for Federal Income Tax purposes. For changes in such period see INCT 724, 725 and 1508.

INCT 2215 Computation of taxable net income of banks.

A. Gains and losses. In determining gain or loss from sale or other disposition of assets, the provisions of Minn. Stat. §§ 290.12, 290.13, 290.14 and 290.15 shall apply to national and state banks except that in no case will the fair market value as of January 1, 1933, be used as the loss or gain basis. For the purpose of determining a gain the fair market value as of January 1, 1940 shall be used as a basis if such value after adjustments exceeds the cost after adjustments. However, for the purpose of determining a loss cost must be used as the basis and not the fair market value as of January 1, 1940. If property acquired before January 1, 1940, is sold or disposed of for more than cost, as adjusted, and for less than its January 1, 1940, fair market value, as adjusted, no gain or loss is recognized.

For taxable years beginning after December 31, 1946, property consisting of investments in bonds, stocks, notes, debentures, mortgages, certificates, or any evidence of indebtedness, and any property acquired in liquidation thereof when such property is held for investment or for sale are not considered to be capital assets. Gains from the sale or other disposition of such assets are includible in income in full. Losses are deductible in full.

B. Depreciation. In no case shall fair market value as of January 1, 1933, be used as the basis for computing depreciation under the provisions of this Act. Banking corporations shall use either cost or fair market value as of January 1, 1940, as the basis for computing depreciation. However, Minn. Stat. § 290.16, Subd. 1, provides that the basis upon which exhaustion, wear, tear, obsolescence, or depletion is computed shall be the same as that for the purpose of determining loss or gain on the sale of property.

Thus, if depreciation is computed and allowed on the basis of value as of January 1, 1940, and it later appears, when the asset is sold, that cost must be used as the loss or gain basis, adjustments must then be made for excessive depreciation in prior years in the amount that the depreciation which was allowed exceeds that depreciation allowable when computed on the basis of cost.

C. Charge-offs, write-downs, and recoveries relating to bad debts. Under the provisions of Minn. Stat. § 290.09, Subd. 6, national and state banks will be allowed to deduct debts which become worthless and are charged off during the taxable year. If a bad debt becomes worthless in part during the taxable year, a deduction may be taken to the extent of such partial worthlessness. If a bad debt is ordered charged off in whole or in part by national or state authorities, such determiantion shall be considered as prima facie evidence of worthlessness.

Where a debt has been deducted from the gross income subsequent to January 1, 1940, and the taxpayer realized a recovery of all or part of such debt, the amount so recovered constitutes taxable income only to the extent that a tax benefit resulted in the year of deduction. If the debt was charged off prior to January 1, 1940, and all or part of such debt is recovered subsequent to January 1, 1940, no part of such recovery will constitute taxable income.

If the Federal or State banking authorities require that an asset be charged off as worthless or that it be written down to nominal value, such determination will be considered as prima facie evidence of worthlessness. If such determination is based upon market fluctuation or if no reasonable attempt has been made to determine worthlessness, such action on the part of Federal or State banking authorities will not be considered conclusive evidence of worthlessness. No deduction for income tax purposes of the amount so charged off or written down will be allowed unless other evidence is submitted substantiating that such asset actually became worthless during the taxable year.

INCT 2216 Partnerships. Minn. Stat. § 290 does not impose any income tax on partnerships as such although partnerships are required to submit information returns. See Minn. Stat. § 290.41.

Partners are subject to income tax on their distributive share of partnership income. The provisions of Minn. Stat. § 290.31 are applicable only to corporations that are members of partnerships. The income tax on individuals, estates and trusts is based on their federal "adjusted gross income," including any income from partnerships. See Minn. Stat. § 290.311.

INCT 2217 Gross income from partnerships. The Minnesota gross income of individuals, estates and trusts includes any income received from, or loss resulting from, a partnership that is included in their federal "adjusted gross income," subject to any modifications that are required under the provisions of Minn. Stat. § 290.01, subd. 20 and Minn. Stat. §§ 290.17-290.20 (inclusive).

INCT 2218 Authority of commissioner. The Commissioner of Revenue, or his representative, has power to examine all books and records of a taxpayer, as necessary to enforce the Income Tax Act. He can order persons to appear in order to give testimony concerning income tax matters, and can order persons to produce books and records relating to income tax matters.

INCT 2219 Federal returns. The Commissioner may examine the taxpayer's copy of his federal return for any taxable year.

INCT 2220 Change in federal return. The taxpayer must furnish a copy of any amended federal return to the Commissioner of Revenue within 90 days of the date such amended federal return is filed with the Internal Revenue Service. The taxpayer must report any change by the Internal Revenue Service in his income or deductions to the Commissioner of Revenue within 90 days of the date such change is made.

If such amended return or report is furnished to the Commissioner within the 90 day period, the Commissioner shall have one year from the date such is received in which to recompute or reasessess the tax, or he may reassess the tax within the period provided in Minn. Stat. § 290.49, whichever period is longer.

If such amended return or report is not furnished to the Commissioner of Revenue within the required 90 day period, the Commissioner may reassess the tax within six years after the amended return is filed or after the final change is made, notwithstanding any period of limitations to the contrary.

INCT 2221 Rounding off of money items. Money items on the return and accompanying schedules may be rounded off to the nearnest whole-dollar amount, disregarding amounts of less than 50 cents, and increasing amounts of 50 cents to 99 cents to the next highest dollar.

Rounding off money items applies only to amounts required to be reported on the return or accompanying schedules. It does not apply to items which must be taken into account in arriving at total amounts to be entered on the tax return or accompanying schedules.

Example: Wage and tax statements; Minnesota tax withheld, four employers:

1.	$ 94.56
2.	$ 76.49
3.	$102.61
4.	$ 92.70
Total	$369.36

You may round this off to $369. You may not round off each figure to arrive at $370, since the only required figure to be shown on the tax return is the total.

If an election is made to round off any amounts on the return then all amounts on the return must be rounded. The election to round off for federal purposes does not constitute an election to do the same for Minnesota. However, if an amount has been rounded off for federal purposes in arriving at Federal Adjusted Gross and an item has to be added back or subtracted from this figure to arrive at Minnesota adjusted gross the rounded off amount must be used.

Chapter Twenty-Three: Withholding

INCT 2300 Collection of income tax at source on wages. The withholding of income tax on wages and other payments shall be in accordance with the withholding tables, rules, and instructions set forth in the Department of Revenue Circular MW-B.

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Official Notices

ENVIRONMENTAL QUALITY COUNCIL

EQC MONITOR

Actions Taken at the July 13, 1976 Meeting

1. Determined not to review Final EIS on MP&L-TR-1 (Twin Cities to Cromwell High Voltage Transmission Line — HVTL)
2. Adopted Hearing Examiner's Findings amending MP&L-TC-1 Corridor to include a portion of the Carlos Avery Wildlife Management Area.
3. Accepted application from NSP for a Construction Permit for single circuit, 500 kV HVTL from Forbes to International Border conditional on submittal of certain information within 30 days. (EQC Docket # NSP-TR-1)
4. Adopted charge to Route Evaluation Committee for NSP-TR-1.
5. Ordered preparation of an Environmental Impact Statement (EIS) on NSP-TR-1 with EQC through its Power Plan Siting staff designated Responsible Agency.
6. Allowed recommendation in Environmental Assessment (EA) that no EIS is required on the widening of Normandale Boulevard to prevail.
7. Order EIS on Dayton Hudson's proposed Wooddale Mall in Woodbury.
8. Found EA adequate and determined no EIS required on Western Life Insurance Company project in Woodbury.
9. Found EA adequate and determined no EIS required on Minneapolis HRA proposed housing project at Lyndale and Minnehaha.
10. Found EA adequate and determined no EIS required on Pebble Beach/Lothlorien plats near Lake Mille Lacs.
11. Found EA adequate and determined no EIS required on Duluth-Mesabi and Iron Range Railroad project at Two Harbors.
12. Found EA adequate and determined no EIS required on Koch Refining proposed fuel oil storage tank in St. Paul.
13. Found EA adequate and determined no EIS required on revised Oak Park Village project in St. Louis Park.
14. Ordered EA prepared on Half-Moon Lake proposed project designating St. Louis County as Responsible Agency in response to petition.
15. Ordered supplementary EA on Proposal to close Nicollet Avenue in Lake-Nicollet development district designating City of Minneapolis as Responsible Agency in response to petition.
16. Determined not to review EIS on proposed Williams-O'Brien Marina on the St. Croix River.
17. Found Sylvan Shores project in Todd County exempt from EIS process.
18. Required submittal of project descriptions for Alter Company and Great Lakes Coal and Dock coal handling facilities in St. Paul/So. St. Paul.

FOR FURTHER INFORMATION, CONTACT:

The Minnesota Environmental Quality Council
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
PHONE: 612/296-3985

(End of EQC Monitor)

OFFICE OF THE GOVERNOR

Appointment of Commissioner of Transportation

Mr. R. James Harrington has been appointed by me to be Commissioner of Transportation and will assume that post on August 2, 1976. Under the provisions of Laws 1976, ch. 166, § 121, Commissioner Harrington will prepare with a skeleton staff the formation of the new Department of Transportation. The new department will become operational when the DOT assumes functions from the current Departments of Highways, Aeronautics, and of Public Service, and from the State Planning Agency. At that time, the Departments of Highways and Aeronautics will be abolished.

Wendell R. Anderson
Governor

POLLUTION CONTROL AGENCY

DIVISION OF WATER QUALITY

Notice of Public Hearing

Water Pollution Control Program

The public is invited to participate in the formulation of Minnesota's Water Pollution Control Program Plan for the prevention, reduction and elimination of water pollution for the Federal fiscal year October 1, 1976 through September 30, 1977.

The meeting will be conducted on August 10 by Mr. Lyle H. Smith, Chief Pollution Control Engineer, at 10:00 A.M., in the Agency Board Room, 1935 West County Road B2, Roseville, Minnesota 55113. The meeting will continue until all interested persons have had an opportunity to be heard by either submitting oral or written statements, comments or arguments. Statements may be mailed to the Roseville office for submission into the record at any time prior to the closing of the record at 4:30 P.M., August 11, 1976.

The proposed Program Plan addresses the development of the 208 program, water quality monitoring, the issuance of discharge permits, the enforcement of discharge permits, the establishment of water quality standards and the awarding of grants for the construction of municipal waste water treatment plants. These topics will be discussed at the meeting.

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