

Inheritance, Gift, Income, and Privilege Taxes

CHAPTER 290

INCOME TAXES AND PRIVILEGE TAXES ON CORPORATIONS MEASURED BY INCOME

290.01 DEFINITIONS.

HISTORY. 1933 c. 405 ss. 1, 10, 11, 21, 22; Ex. 1937 c. 49 s. 16; M. Supp. ss. 2394-1, 2394-10, 2394-11, 2394-21, 2394-22; 1941 c. 550 s. 11; 1943 c. 656 ss. 1, 11; 1945 c. 604 ss. 1, 2, 19.

The power of taxation is inherent in sovereignty and reposes in the legislature; and except as limited by the state or federal constitution is exhaustive and embraces every conceivable subject of taxation. Double taxation is not forbidden unless it results in lack of uniformity or conflicts with the due process or equal protection clauses. Laws 1933, Chapter 405, held constitutional. *Reed v Bjornson*, 191 M 254, 253 NW 102.

The state income tax law was enacted for the benefit of the school districts of the state; and the districts acquire an interest as soon as an obligation to pay the tax becomes due and owing to the state. Accordingly, all income tax receipts for the taxable year 1936 and prior years must be distributed according to the provision of Laws 1933, Chapter 405, Section 57, and not under the 1937 amendment. *Board v Anderson*, 205 M 77, 285 NW 80.

That part of Laws 1933, Chapter 359, reducing rate at which homesteads shall be valued for taxation but preserving the former rates for the purpose of figuring "tax limitation held" does not amend a provision of the Minneapolis city charter limiting school tax to 22 mills on the dollar. *510 Groveland v Erickson*, 201 M 386, 276 NW 287.

In an application for a peremptory writ of mandamus commanding the state auditor to refund certain excess income taxes it was held: the bill presented to the governor must be the same in substance and legal effect as the bill passed by the legislature, but immaterial errors will be disregarded, and erroneous references included in an amendatory act identifying the statute to be amended may be eliminated as surplusage and the statute read as corrected where the legislature's intent is clear. *Bull v King*, 205 M 427, 286 NW 311.

Where a power is conferred to be exercised for the benefit of the state or a private party the word "may" means "must" and the statute is mandatory; and this applies to Laws 1933, Chapter 405, Section 32c, regarding the income tax rates of affiliated or related corporations. *State v Oliver Iron Mining*, 207 M 630, 292 NW 407; *State v Duluth, Missabe & Northern*, 207 M 637, 292 NW 411.

One who is not discriminated against by a legislative classification does not have an interest entitling him to raise the question of unconstitutionality of a statute on the ground that it denies equal rights and privileges by discriminating between persons and classes generally or between classes of which he is not a member. *Thomas Stores v Spaeth*, 209 M 510, 297 NW 9.

Where a statute has been judicially construed, especially when administrative and executive officers charged with its enforcement have acquiesced therein for a long time, such construction becomes a part thereof and its meaning and import are measured thereby. *Bemis v Wallace*, 197 M 224, 266 NW 690.

A state income tax upon the salary of the governor of a federal reserve bank is a direct burden on the exercise of the government's sovereign powers and the salary is immune from the income tax. (1938). *Gerry v Minnesota Tax Commission*, 202 M 366, 278 NW 594.

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Prior to enactment of Ex. Laws 1937, Chapter 49, Section 14, a donee of property acquired before January 1, 1933 was required to adopt the fair market value on that date as the basis for computation of capital gain or loss upon the sale or other disposition of that property; after 1937 donees acquiring property prior to the basic date were authorized to use their donor's basis. *Thorpe v Spaeth*, 211 M 206, 300 NW 607.

The term "gross income" refers to total revenues of the business before the deductions allowed in section 290.09 are made. Expenditures made for labor, material, and supplies in performance of a dredging contract are "ordinary and necessary expense", incurred in carrying on a business, and not an investment of capital assets. *Duluth Superior Co. v Commissioner*, 217 M 346, 14 NW(2d) 439.

The legislature has wide discretion in classifying property for taxation, but classification must be based on differences furnishing reasonable ground for distinction and not so wanting in substance as to permit one class to escape burdens imposed on another class under substantially similar conditions. The differences between federal savings and loan associations and state credit unions constitute reasonable grounds for distinction. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 568.

In defining gross income the broad sweep of the language used by congress indicates its purpose to use the full measure of its taxing power granted to it by the income tax amendment. *Manseau v United States*, 52 F. Supp. 395.

The ascertainment of the time the debt became worthless, so as to be deductible in computing net income, must be made by the taxpayer, but such ascertainment must be reasonable; and the taxpayer is usually allowed a range of time within which to make such ascertainment. *Foley v Reynolds*, 58 F. Supp. 229.

Revenues derived from the state income tax by the unorganized school district of St. Louis county must first be applied toward the payment of interest and principal on the bonded indebtedness. 1934 OAG 345, March 27, 1934 (531).

The bonds of a dissolved district are not payable by the unorganized district out of the proceeds of its income tax receipts. 1934 OAG 801, July 21, 1934 (531i).

Supreme court, state district court, and probate court judges are liable to pay income tax on their salaries. 1934 OAG 804, April 7, 1934 (531h).

Railroads paying gross earnings taxes are not exempt from the tax imposed by Laws 1933, Chapter 405. 1934 OAG 805, Nov. 13, 1933 (365a-11).

The commissioner of taxation or his employees when served with a subpoena duces tecum must comply with the order of the court and give testimony. 1936 OAG 373, Jan. 11, 1936 (428f).

It is entirely within the discretion of the commissioner of taxation to determine whether the evidence of financial responsibility of a taxpayer is sufficient and satisfactory so as to be accepted in lieu of a bond. 1940 OAG 305, Aug. 12, 1940 (324).

Minnesota state income tax. 18 MLR 93.

Taxable persons. 18 MLR 104.

Gross income; general considerations. 18 MLR 117.

Capital gains. 18 MLR 133.

Corporate distributions. 18 MLR 140.

Improvements made by lessee on leased premises as income to the lessor. 20 MLR 320.

Jurisdiction over the person when the tax is assessed. 22 MLR 746.

Jurisdiction when retroactive legislation is enacted. 22 MLR 748.

Constructions of tax laws. 23 MLR 107.

Partnerships; comparative tax burden. 23 MLR 507.

Allocations of business income. 25 MLR 894.

Aspects of the internal revenue statutes, rules, and regulations. 28 MLR 377.

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290.02 INCOME TAXES AND PRIVILEGE TAXES

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290.02 IMPOSITION OF PRIVILEGE TAX ON CORPORATIONS; MEASUREMENT.

HISTORY. 1933 c. 405 s. 2; Ex. 1937 c. 49 s. 2; M. Supp. s. 2394-2.

The tax provided by Laws 1933, Chapter 406, impliedly repealed the corporate excise tax. *Bemis v Wallace*, 197 M 216, 266 NW 690.

The part of the corporate franchise which a railroad corporation exercises outside the scope of railroad operation becomes subject to the tax imposed by Laws 1933, Chapter 405, Section 2, measured by the net taxable income from such non-operating activity. *State v Duluth, Missabe & Northern*, 207 M 618, 292 NW 401.

Strictly a corporation can be domiciled only in the state of its incorporation; but because the legislative purpose so plainly requires, "domiciled" as used in the state income tax law includes any corporation qualified to do business in this state. *Canisteo v Spaeth*, 211 M 185, 300 NW 596.

The disputed sales were localized at the branch office of plaintiff in Minneapolis and had a situs there for income tax purposes, and trial court was justified in finding that said sales were made through, from, or by such branch office. *Maytag Co. v Commissioner of Taxation*, 218 M 460, 17 NW(2d) 37.

Distribution of earnings and profits of personal holding company to sole distributee on liquidation is a "dividend" and is properly deducted from adjusted net income in determining undistributed adjusted net income for purposes of assessment of surtax. *Piper v United States*, 50 F. Supp. 363.

Where corporation, to obtain credit from a bank, had agreed to restrict distribution of corporate funds by way of dividends, salaries, bonuses or advances, the fact that the bank objected to proposed dividends, did not establish that parties construed the agreement as prohibited dividends in any form so as to entitle corporation to credit against surtax upon undistributed profits on ground that corporation was by written contract prohibited from distributing dividends. *Valentine v Commissioner*, 137 F(2d) 481.

Legal character of the taxes imposed. 18 MLR 94.

Validity of franchise tax as measured by income from federal securities. 24 MLR 595.

Income and excess profits tax provisions relating to corporations under the 1943 revenue act. 28 MLR 287.

290.03 CLASSES OF TAXPAYERS.

HISTORY. 1933 c. 405 s. 3; Ex. 1937 c. 49 s. 3; M. Supp. s. 2394-3; 1941 c. 550 s. 1; 1945 c. 410 s. 1.

The salary of the governor of a federal reserve bank for the year 1937 is not subject to the state income tax. *Geery v Minnesota Tax Commission*, 202 M 366, 278 NW 594.

The qualified immunity of national banks from state taxation does not follow dividends on their shares through the First Bank Stock Corporation. The First Bank Stock Corporation is a "non-conductor" of immunity. *Irvine v Spaeth*, 210 M 489, 299 NW 204.

Residents of Wisconsin may be taxed upon the income derived from business or personal services, though it may result in double taxation of income. *Hughes v Wisconsin Tax Commission*, 227 Wis. 274, 278 NW 403, 304 US 348.

Under Minnesota law, a trust by which securities were conveyed to a clergyman as trustee by his wife for a period of ten years to use the income for charitable purposes was valid, and the trust income was not "income of the settler", so as to permit taxation thereof. *Pierce v United States*, 51 F. Supp. 126; 137 F(2d) 429.

Reciprocal and retaliatory legislation. 21 MLR 371.

290.04 LIABILITY.

HISTORY. 1933 c. 405 s. 4; Ex. 1937 c. 49 s. 4; M. Supp. s. 2394-4.

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290.05 EXEMPTIONS.

HISTORY. 1933 c. 405 s. 5; Ex. 1937 c. 49 s. 5; 1939 c. 446 ss. 1, 2; M. Supp. s. 2394-5; 1941 c. 109; 1941 c. 550 s. 2; 1943 c. 643 s. 1; 1943 c. 656 ss. 27 subd. 1, 27 subd. 2.

The legislature has power to exempt from taxation when that power is exercised equally and uniformly. *Re Bjornson*, 191 M 254, 253 NW 102.

The rule of construction that an amendatory act providing that the amended act shall read as follows, and then setting forth the amendment, repeals all of the amended act in re-enactment, is not obligatory to the application of the rule that erroneous references in the amendatory act identifying the statute may be corrected to conform to the legislative intent. *Bull v King*, 205 M 427, 286 NW 311.

There is sufficient difference between the powers and operations of the federal savings and loan associations and the state credit unions, so that they may be classified so that the federal savings and loan companies pay an income tax while the credit union does not. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 568.

As of December 22, 1938, salaries of officers and employees of civil conservation corps and other like federal agencies are exempt from Minnesota income tax. OAG Dec. 22, 1938 (531e).

The salaries of officers and employees of national banks and building and loan associations are not exempt. OAG Dec. 22, 1938 (531e).

Power of United States to tax officers and employees of the state. 23 MLR 378.

290.06 RATES OF TAX.

HISTORY. 1933 c. 405 s. 6; Ex. 1937 c. 405 s. 6; 1939 c. 446 s. 3; M. Supp. s. 2394-6; 1941 c. 550 s. 3; 1943 c. 656 s. 2; 1945 c. 604 s. 3.

A partner and calendar year taxpayer must compute the tax imposed upon his distributive share in the net income of the partnership, solely by reference to the rates applicable for his calendar year, without the benefit of the statute which permits fiscal year taxpayers to apportion their tax when rates are changed, between the old and new rates. *Byard v Commissioner*, 209 M 215, 296 NW 10.

A plan for apportioning credit on corporate income tax according to the ratio of property and pay-roll located within the state does not impose a tax on property and business operations outside the jurisdiction of the state in violation of the U. S. Constitution, amendment XIV. *Ward v Commissioner*, 216 M 307, 12 NW(2d) 625.

Credits against net income. 18 MLR 159.

Validity of graduated rates and exemptions. 18 MLR 582.

Comparative tax burden. 23 MLR 511.

290.07 COMPUTATION OF NET INCOME.

HISTORY. 1933 c. 405 s. 9; 1939 c. 446 s. 4; M. Supp. s. 2394-9; 1945 c. 604 ss. 4, 5.

The attempt of the tax commission to increase the rate of interest on demand deposit made by the defendants with the parent corporation from 2½% to 5%, was unreasonable and arbitrary, and properly set aside by the trial court. *State v Duluth, Missabe, & Northern*, 207 M 627, 292 NW 401.

Where corporation on a cash basis annually disbursed to shareholders all its net earnings, in determining corporation's 1937 profits available for distribution, the 1936 federal income tax payable and paid in 1937, and not the 1937 tax payable and paid in 1938, should be deducted from corporation's net income of 1937. *Helvering v Alworth Trust*, 136 F(2d) 812.

Minnesota state income tax. 18 MLR 93.

Immunity of federal employees from 1937 state income taxes. *Geery v Minnesota Tax Commission*, 202 M 366, 278 NW 594.

290.071. CERTAIN INCOME FROM U. S. BONDS.

HISTORY. 1943 c. 656 s. 3; 1945 c. 413 ss. 1, 2.

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290.072 ALIMONY PAYMENTS.

HISTORY. 1943 c. 656 s. 4.

290.073 WHAT IS INCOME.

HISTORY. 1943 c. 656 s. 22.

290.074 FARM INCOME.

HISTORY. 1943 c. 656 s. 23.

290.075 RE-NEGOTIATED CONTRACTS.

HISTORY. 1943 c. 656 s. 26; 1945 c. 604 s. 6.

An agreement between a taxpayer and a federal agency during a taxable year binding the taxpayer irrevocably to repay a certain sum to the federal government is a final determination and deductible from income for the current year, even though there be a clause relating to readjustment. In re American Hoist & Derrick v Bd. of Tax Appeals, Oct. 24, 1944 (195).

290.076 INCOME FROM SERVICES OF CHILD; WHERE INCLUDED.

HISTORY. 1945 c. 604 s. 13.

290.077 INCOME IN RESPECT OF DECEDENTS.

HISTORY. 1945 c. 604 s. 17.

290.08 EXEMPTIONS FROM GROSS INCOME.

HISTORY. 1933 c. 405 s. 12; Ex. 1937 c. 49 s. 7; 1939 c. 446 ss. 5, 6; 1941 c. 18 s. 4; 1941 c. 550 ss. 5, 6; 1943 c. 656 ss. 5, 21 (subd. 1); 1945 c. 449; 1945 c. 604 s. 8.

The decision of the Minnesota supreme court in Geery v Minnesota Tax Commission, 202 M 366, 278 NW 594, and 204 M 107, 282 NW 673, having been overruled by the decisions of the Supreme Court of the United States, the judgments in the above cited cases are vacated, and the salary of the governor of the Federal Reserve Bank is not immune from state income taxes. Geery v Minnesota Tax Commission, 204 M 622, 285 NW 614.

See Duluth-Superior Co. 217 M 346, 14 NW(2d) 439, noted in section 290.01.

"Aggregate premiums and consideration paid", defined. In re Stewart, Bd. of Tax Appeals, Dec. 18, 1944 (158).

Determination of what constitutes a gift under Federal income tax laws. 22 MLR 539.

Federal income tax on profits of lessee of state land. 20 MLR 442.

290.081 WHAT ARE INCLUDED IN INCOME TAXES.

HISTORY. 1941 c. 429; 1943 c. 656 s. 19.

290.09 DEDUCTIONS FROM GROSS INCOME.

HISTORY. 1933 c. 405 s. 13; Ex. 1937 c. 47 ss. 8, 9; 1941 c. 550 s. 7; 1943 c. 656 ss. 6, 7, 8, 24, 25; 1945 c. 607 s. 7.

Statutory construction lies wholly within the domain of ambiguity; and when the language of a statute is plain there is no room for construction; and applied to this fact "income taxes permitted to be deducted hereunder shall regardless of the method of accounting employed be deductible only in the taxable year in which paid" is free from doubt. Hall v Gage, 197 M 619, 268 NW 202.

Expenditures in connection with tangible property outside Minnesota are not deductible in income tax returns to the state of Minnesota; and holdings otherwise

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by a former tax commission are not controlling. *State v Dancer*, 213 M. 289, 6 NW(2d) 466.

See *Duluth-Superior Co. v Commissioner*, 217 M 352, 14 NW(2d) 440, noted in section 290.01.

Whether a purchaser of real estate who pays taxes thereon for the current year may deduct them on his income tax return as "taxes paid or accrued within the taxable year" depends on whether a lien of such taxes attached to the real estate before or after the date of the purchase. *United States v Consolidated*, 141 F(2d) 792.

Where corporation on a cost basis annually disbursed to shareholders all its net earnings, in determining corporation's 1937 profits available for distribution, the 1936 federal income tax payable and paid in 1937, and not the 1937 tax payable and paid in 1938, should be deducted from corporation's net income for 1937. *Helveny v Alworth*, 136 F(2d) 813.

Contributions by a corporation to community chest as ordinary and necessary expense. 20 MLR 441.

Contributions to unemployment compensation act are taxes which are deductible. OAG Dec. 21, 1936 (82s).

Legal character of taxes imposed. 18 MLR 98.

Deductions from gross income. 18 MLR 146.

Net income. 18 MLR 115.

Determination of what constitutes a gift under the Federal income tax laws. 22 MLR 539.

Partnerships; comparative tax burden under state and Federal statutes. 23 MLR 511.

290.095 NET OPERATING LOSS.

HISTORY. 1945 c. 604 s. 28.

290.10. NON-DEDUCTIBLE ITEMS.

HISTORY. 1933 c. 405 s. 14; Ex. 1937 c. 49 s. 11; 1939 c. 446 s. 7; M. Supp. s. 2394-14; 1941 c. 550 s. 8.

290.11 INVENTORIES SHALL BE TAKEN IN CERTAIN CASES.

HISTORY. 1933 c. 405 s. 15; M. Supp. s. 2394-15.

Prior to the amendment Ex. Laws 1937, Chapter 39, Section 14, the basis for determining gain or loss from a sale or disposition of property acquired by a taxpayer by inheritance before January 1, 1933, was the market value on that date. *State v Stickney*, 213 M 89, 5 NW(2d) 351.

290.12 GAIN AND LOSS ON SALES.

HISTORY. 1933 c. 405 s. 16; M. Supp. s. 2394-16; 1945 c. 604 s. 9.

Prior to 1937, a donee of property acquired before January 1, 1933, was required to adopt the fair market value on that date as the basis for computation of capital gain or loss upon sale or disposition of the property; but the enactment of Ex. Laws, 1937, Chapter 49, Section 14, permitted donees to use the donor's basis. *Thorpe v Spaeth*, 211 M 206, 300 NW 607; *State v Stickney*, 213 M 91, 5 NW(2d) 351.

Capital gains. 18 MLR 128.

290.13 TRANSACTIONS IN WHICH GAIN OR LOSS IS NOT RECOGNIZED.

HISTORY. 1933 c. 405 s. 17; Ex. 1937 c. 49 s. 12; M. Supp. s. 2394-17; 1945 c. 596 s. 3.

A corporation's receiver, reporting to the court sale of assets of a corporation, of which he was a stockholder and officer, without disclosing his previous arrangement with the purchaser to continue as stockholder and officer of the new corpora-

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tion to be formed by them, may not be heard to say that there was a "reorganization" within income tax laws and thus avoid taxation of gain on his subsequent sale of stock in the new corporation. *Feinberg v Spaeth*, 214 M 399, 8 NW(2d) 240.

Capital gains. 18 MLR 125.

290.14 BASIS FOR DETERMINING GAIN OR LOSS.

HISTORY. 1933 c. 405 s. 18; Ex. 1937 c. 49 s. 13; M. Supp. s. 2394-18; 1943 c. 656 s. 21 subd. 2.

Prior to 1937 a donee of property acquired before January 1, 1933 was required to adopt the fair market value on that date as the basis for computation of capital gain or loss upon the sale or other disposition of that property. *Thorpe v Spaeth*, 211 M 205, 300 NW 607; *State v Stickney*, 213 M 89, 5 NW(2d) 351; *Feinberg v Spaeth*, 214 M 399, 8 NW(2d) 240.

Capital gains. 18 MLR 135.

290.15 BASIS FOR DETERMINING GAIN OR LOSS FROM DISPOSITION OF PROPERTY ACQUIRED BEFORE JANUARY 1, 1933.

HISTORY. 1933 c. 405 s. 19; Ex. 1937 c. 49 s. 14; M. Supp. s. 2394-19; 1941 c. 550 s. 9; 1943 c. 656 s. 9.

See *Thorpe v Spaeth*, 211 M 206, 300 NW(2d) 607; *State v Stickney*, 213 M 91, 5 NW(2d) 351; *Feinberg v Spaeth*, 214 M 399, 8 NW(2d) 240.

See annotations under section 290.14.

290.16 DEDUCTIONS.

HISTORY. 1933 c. 405 s. 20; Ex. 1937 c. 49 s. 15; M. Supp. s. 2394-20; 1941 c. 550 s. 10; 1943 c. 656 s. 10; 1945 c. 596 s. 1.

Deductions from gross income. 18 MLR 149.

290.17 GROSS INCOME TO BE ALLOCATED.

HISTORY. 1933 c. 405 s. 23; Ex. 1937 c. 49 s. 17; M. Supp. s. 2394-23.

Plaintiff, a non-resident employed in this state for a period in excess of 150 days, must include in his gross income salary "paid while on a vacation outside of this state" since it was actually salary paid for services rendered in this state so far as income taxation is concerned. The income tax is not geared to a per diem basis. *Hughes v Spaeth*, 207 M 577, 292 NW 194.

Strictly a corporation can be domiciled only in the state of its incorporation, but the legislative purposes as set out in Laws 1933, Chapter 405, Section 23, plainly requires that the word "domiciled" includes any corporation qualified to do business in Minnesota. *Canisteo v Spaeth*, 211 M 185, 300 NW 596; *State v Dancer*, 213 M 289, 6 NW(2d) 466.

Dividends received by a corporation having a commercial domicile within the state from stocks of its subsidiaries not employed in its, but in their business are assignable to the state under section 23(b) of the state income tax. *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728.

A resident partner in an accounting firm is liable for a tax on his salary and also on his share of the partnership profits from the various offices throughout the country. In *re Beckert*, Bd. of Tax Appeals, Nov. 15, 1944 (179).

Rent from land is income or gain from tangible property. OAG March 26, 1934.

Reciprocal and retaliatory legislation. 21 MLR 371, 401.

Allocable income. 25 MLR 853, 857.

290.18 COMPUTATION OF NET INCOME.

HISTORY. 1933 c. 405 s. 24; M. Supp. s. 2394-24; 1945 c. 604 s. 10.

The term "gross income" as used in section 290.18(2) refers to total revenues of the business before the deductions allowed in section 290.09 are made. *Duluth Superior Co. v Commissioner*, 217 M 346, 14 NW(2d) 439.

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290.19 ALLOCATION OF TAX.

HISTORY. 1933 c. 405 s. 25; 1939 c. 446 s. 22; M. Supp. s. 2394-25; 1941 c. 550 s. 20.

See *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728; *Duluth-Superior Co.* 217 M 346, 14 NW(2d) 439.

Sales made "through, from or by" a branch office of plaintiff within this state are properly taxable though consummated without the state. The word "and" is construed in a disjunctive sense. *Maytag v Commissioner of Taxation*, 218 M 460, 17 NW(2d) 37.

Printing presses in hands of purchasers under long term conditional sales contracts are not tangible property owned or used by the manufacturer in connection with its trade or business. *Brandtjen v Kluge*, Board of Tax Appeals, July 12, 1944 (164).

Allocation of business income. 25 MLR 885, 900.

290.20 COMMISSIONER TO PRESCRIBE METHODS.

HISTORY. 1933 c. 405 s. 26; Ex. 1937 c. 49 s. 29; 1939 c. 446 s. 23; M. Supp. s. 2394-26.

The commissioner is authorized to use other methods of accounting. This is not a delegation of legislative power. *Burroughs Adding Machine Co*; Board of Tax Appeals, June 6, 1944 (93).

290.21 CREDITS AGAINST TAX.

HISTORY. 1933 c. 405 s. 27; Ex. 1937 c. 49 s. 18; 1939 c. 446 s. 8; M. Supp. s. 2394-27; 1941 c. 550 s. 21; 1943 c. 656 s. 28.

Construction of tax statutes relating to credit. *Bull v King*, 205 M 432, 286 NW 311.

Laws 1933, Chapter 405, Section 32c, does not impose a penalty to prevent tax evasion, but is a provision for a combined tax upon the consolidated income of affiliated or related corporations and the law is valid. *State v Oliver Iron Mining*, 207 M 630, 637, 292 NW 407, 411.

The difference between federal savings and loan associations and credit unions, organized under the laws of the state of Minnesota, is sufficient to sustain the classification embodied in the law. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 569.

An unmarried taxpayer not living with dependent parents is not entitled to a \$2,000 personal exemption. OAG April 17, 1934 (531d).

It is within the discretion of the commissioner of taxation to determine whether evidence of financial responsibility is sufficient and satisfactory in lieu of a bond. 1940 OAG 305, Aug. 12, 1940 (324).

The contribution of a taxpayer in support of the Minnesota resources commission is entitled (up to 15% of his net income) to credit. OAG May 12, 1944 (531-L).

Deductions from gross income. 18 MLR 152.

290.22 APPLICATION.

HISTORY. 1933 c. 405 s. 28; 1939 c. 446 s. 9; M. Supp. s. 2394-29.

The donor is taxable on the income of a trust used to pay premiums on life policies included in the trust estate. *VanDusen's Estate*, 138 F(2d) 510.

290.23 ESTATES OR TRUSTS; COMPUTATION; CREDITS; DEDUCTIONS.

HISTORY. 1939 c. 446 s. 10; M. Supp. s. 2394-28a; 1941 c. 500 s. 12; 1943 c. 656 s. 12; 1945 c. 604 s. 29.

Special cases. 18 MLR 161.

Moratory legislation for the relief of mortgagor. 18 MLR 344.

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290.24 ESTATES OR TRUSTS; PERSONAL CREDIT.

HISTORY. 1939 c. 446 s. 10; M. Supp. s. 2394-28b; 1941 c. 550 s. 23.

290.25 RULE WHEN TAXABLE YEAR DIFFERS.

HISTORY. 1939 c. 446 s. 10; M. Supp. s. 2394-28c.

290.26 COMPUTATION OF NET INCOME OF ESTATE OR TRUST.

HISTORY. 1939 c. 446 s. 10; M. Supp. s. 2394-28d; 1945 c. 604 s. 18.
Taxable net income. 18 MLR 155.

290.27 REVOCABLE TRUSTS.

HISTORY. 1939 c. 446 s. 10; M. Supp. s. 2394-28e.
Special cases. 18 MLR 162.

Insurance and annuity contracts under the federal estate tax. 25 MLR 251.

290.28 RESERVATION OF INCOME BY GRANTOR.

HISTORY. 1939 c. 446 s. 10; M. Supp. s. 2394-28f.

290.281 COMMON TRUST FUND NOT TAXED.

HISTORY. 1945 c. 604 s. 14.

290.29 TRANSFEREES AND FIDUCIARIES.

HISTORY. 1933 c. 405 s. 29; 1939 c. 446 s. 11; M. Supp. s. 2394-29; 1943 c. 656 s. 13.

290.30 FIDUCIARY TO PAY TAX.

HISTORY. 1939 c. 446 s. 12; M. Supp. s. 2394-29a.

290.31 PARTNERSHIPS NOT TAXED.

HISTORY. 1933 c. 405 s. 30; Ex. 1937 c. 49 s. 20; 1939 c. 446 s. 13; M. Supp. s. 2394-30; 1945 c. 596 s. 2; 1945 c. 604 s. 30.

A partner and calendar year taxpayer must compute the tax imposed upon his distributive shares in the net income of the partnership solely by reference to the rates applicable for his calendar year, without the benefit of the statute which permits fiscal year taxpayers to apportion their tax between the old and new rates. *Byard v Commissioner*, 209 M 215, 296 NW 10.

Partnerships; comparative tax burden. 23 MLR 507.

290.32 TAXES FOR PART OF YEAR.

HISTORY. 1933 c. 405 s. 31; M. Supp. s. 2394-31.

290.33 TAXABLE YEAR EXTENDING INTO CALENDAR YEARS AFFECTED BY DIFFERENT LAWS.

HISTORY. 1933 c. 405 s. 32-1; Ex. 1937 c. 49 s. 21; M. Supp. s. 2394-32a.

290.34 SPECIAL PROVISIONS FOR CORPORATIONS.

HISTORY. 1933 c. 405 s. 32; M. Supp. s. 2394-32; 1941 c. 458; 1941 c. 550 s. 13.

Only that part of its corporate franchise which a railroad corporation exercises outside the scope of railroad ownership or operations becomes subject to the tax imposed by Laws 1933, Chapter 405, Section 2. Rent paid to a lessor of a rail-

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road by its operating lessee may not properly be considered fruits of a non-railroad exercise of the lessor's franchise. *State v Duluth, Missabe & Northern*, 207 M 619, 292 NW 401; *State v Duluth, Missabe & Northern*, 207 M 637, 292 NW 411.

It does not offend our tax laws or any provision of Laws 1933, Chapter 405, that affiliated or related corporations which have no tax status in this state are not joined in the consolidated return. If all the affiliated corporations which are taxable in this state are joined in the consolidated return it is a sufficient compliance with our laws. *State v Oliver Iron Mining*, 207 M 630, 292 NW 407.

Special cases. 18 MLR 164.

290.35 INSURANCE COMPANIES; REPORT OF NET INCOME; COMPUTATION OF AMOUNT OF INCOME ALLOCABLE TO STATE.

HISTORY. 1933 c. 405 s. 32-2; Ex. 1937 c. 49 s. 21; M. Supp. s. 2394-32b.

290.36 INVESTMENT COMPANIES; REPORT OF NET INCOME; COMPUTATION OF AMOUNT OF INCOME ALLOCABLE TO STATE.

HISTORY. 1933 c. 405 s. 32-3; Ex. 1937 c. 49 s. 21; M. Supp. s. 2394-32c.

Where a corporation, organized under the laws of one state, transacts no business there and establishes its principal office in another, where it manages and directs its business, it acquires a commercial domicile there, in virtue of which it is subject to taxation there upon its intangibles, even though its business may extend to other states. *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728.

290.361 TAX ON INCOME OF NATIONAL BANKS.

HISTORY. 1941 c. 18 s. 1; 1945 c. 604 s. 22.

290.362 TAX HOW COMPUTED.

HISTORY. 1941 c. 18 s. 2.

290.363 EFFECTIVE JANUARY 1, 1940; TAXES REFUNDED IN CERTAIN CASES.

HISTORY. 1941 c. 18 s. 3.

290.37 WHO SHALL MAKE RETURNS.

HISTORY. 1933 c. 405 s. 33; Ex. 1937 c. 49 s. 32; M. Supp. s. 2394-33; 1943 c. 656 s. 14; 1945 c. 604 s. 11.

290.38 MARRIED WOMEN MAY MAKE SEPARATE RETURNS.

HISTORY. 1933 c. 405 s. 34; M. Supp. s. 2394-34.
Taxable persons. 18 MLR 103.

290.39 RETURN; FORM; FILING.

HISTORY. 1933 c. 405 ss. 35, 36; M. Supp. s. 2394-35, 2394-36.

Rule regarding consolidated returns. *State v Duluth, Missabe & Northern*, 207 M 618, 637, 292 NW 401, 411.

290.40 SHALL BE ANNUAL RETURN; EXCEPTIONS.

HISTORY. 1933 c. 405 s. 37; M. Supp. s. 2394-37.

290.41 RETURNS NECESSARY TO BE MADE.

HISTORY. 1933 c. 405 s. 38; Ex. 1937 c. 49 s. 22; M. Supp. s. 2394-38; 1941 c. 550 s. 14.

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290.411 INCOME TAXES AND PRIVILEGE TAXES

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290.411 WITHHOLDING INCOME TAX; REFUNDING.

HISTORY. 1943 c. 656 s. 20.

290.42 DATE OF FILING.

HISTORY. 1933 c. 405 s. 39; Ex. 1937 c. 49 s. 23; M. Supp. s. 2394-39.

290.43 WHERE FILED.

HISTORY. 1933 c. 405 s. 40; M. Supp. s. 2394-40.

290.44 PAYMENT OF TAX; EXCEPTIONS.

HISTORY. 1933 c. 405 s. 41; M. Supp. s. 2394-41.

290.45. TAX TO BE PAID WHEN RETURN FILED.

HISTORY. 1933 c. 405 s. 42; M. Supp. s. 2394-42; 1941 c. 335; 1941 c. 550 s. 15.

290.46 SHALL EXAMINE TAXPAYERS' RECORDS.

HISTORY. 1933 c. 405 s. 43; 1939 c. 446 s. 21; M. Supp. s. 2394-43.

Only that part of its corporate franchise which a railroad corporation exercises outside the scope of railroad ownership or operations becomes subject to the tax imposed by Laws 1933, Chapter 405, Section 2, measured by the net taxable income from such non-operating activity. *State v Duluth, Missabe & Northern*, 207 M 618, 637, 292 NW 401, 411.

Under Laws 1933, Chapter 405, Section 47a, the commission upon finding that an overpayment was made by a citizen, was under duty to order a refundment, and mandamus is the proper remedy to enforce the performance of this duty. *State ex rel v Minnesota Tax Commission*, 208 M 195, 293 NW 243.

290.47 FAILURE TO MAKE RETURN OR PAY TAX.

HISTORY. 1933 c. 405 s. 44; Ex. 1937 c. 49 s. 30; M. Supp. s. 2394-44; 1941 c. 550 s. 16.

See annotations under section 290.46.

290.48 COLLECTION OF TAX.

HISTORY. 1933 c. 405 s. 45; M. Supp. s. 2394-45.

See annotations under section 290.46.

In an action by the state to collect an additional income tax, a complaint alleging that defendant filed an income tax return for the year 1936; that, after duly auditing the return, the commissioner of taxation found and determined that defendant was indebted to the state for an additional tax of \$462.10; that the commissioner duly assessed such additional tax, and that no part of such tax with penalties and interest has been paid, though demanded; is sufficient. *State v Haglin*, 216 M 388, 13 NW(2d) 6.

290.49 ASSESSMENT OF TAX.

HISTORY. 1933 c. 405 s. 46; Ex. 1936 c. 87 s. 1; Ex. 1937 c. 49 s. 24; 1939 c. 59 s. 2; 1939 c. 446 s. 14; M. Supp. s. 2394-46; 1941 c. 550 s. 17; 1943 c. 656 s. 15; 1945 c. 604 s. 12.

The three-year statute of limitations found in the 1937 amendment applies to taxes for fiscal years ending in 1937. OAG Feb. 10, 1939 (531g).

If an assessment is made within three years, state has six years after the return is filed to institute proceedings for collection. OAG March 6, 1939 (531f).

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290.50 REFUNDMENT OF OVERPAYMENTS.

HISTORY. 1933 c. 405 s. 47; 1939 c. 446 ss. 15, 19; M. Supp. s. 2394-47; 1941 c. 550 ss. 18, 22; 1943 c. 656 s. 16; 1945 c. 604 s. 21.

A state income tax upon the salary of the governor of a federal reserve bank is a direct burden on the exertion of the federal government's sovereign powers and the salary is immune from income tax, and the tax if paid should be refunded. *Geery v Minnesota Tax Commission*, 202 M 367, 278 NW 594; *Bull v King*, 205 M 427, 286 NW 311; *State ex rel v Minnesota Tax Commission*, 208 M 195, 293 NW 243.

Recovery by taxpayer of portion of special assessment levied to discharge judgment liability upon subsequent receipt by municipality of a contribution from one jointly liable. 24 MLR 701.

290.51 AGREEMENTS.

HISTORY. 1939 c. 446 s. 18; M. Supp. 2394-50a.

290.52 ADMINISTRATION AND ENFORCEMENT.

HISTORY. 1933 c. 405 s. 50; Ex. 1937 c. 49 s. 27; 1939 c. 446 s. 17; M. Supp. s. 2394-50; 1943 c. 656 s. 18.

An inventory in probate proceedings in the administration of a decedent's estate showing the value for purposes of inheritance tax determination of property acquired before January 1, 1933, by a taxpayer but inherited from the decedent, is not an inventory for purposes of determining gain or loss within the meaning of Laws 1933, Chapter 405, Section 19. *State v Stickney*, 213 M 89, 5 NW(2d) 351.

Ex. Laws 1937, Chapter 49, Section 18, amending the state income tax act. The tax commission adopted a regulation which in effect eliminated the words "organized under the laws of the state". The commission had authority to eliminate the provision referred to, and the act, because of such elimination, is valid. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 569.

The commissioner may legally prescribe that no person may appear before the commission or income tax department on any matter pertaining to taxes due under income tax acts without being accompanied and represented by an attorney at law. OAG April 25, 1939 (130a).

290.53 PENALTIES.

HISTORY. 1933 c. 405 s. 49; Ex. 1937 c. 49 s. 25; M. Supp. s. 2394-49; 1941 c. 550 s. 19; 1943 c. 656 s. 17; 1945 c. 604 s. 20.

Expenditures in connection with tangible property outside Minnesota are not deductible in income tax returns to the state of Minnesota; and the fact that such deductions were allowable by a former tax commission is not controlling. In re *Estate of Abbott*, 213 M 289, 6 NW(2d) 466.

290.54 TAX A PERSONAL DEBT.

HISTORY. 1933 c. 405 s. 48; M. Supp. s. 2394-48.

The First Bank Stock Corporation is an old company and is a "non-conductor" of immunity; and the fact that their income is derived largely from dividends from stock owned in state and national banks does not relieve "general banks" from taxation. *Irvine v Spaeth*, 210 M 489, 299 NW 204.

Action brought under this section. *State v Haglin*, 216 M 388, 13 NW(2d) 6.

290.55 APPLICATION.

HISTORY. 1939 c. 446 s. 20; M. Supp. s. 2394-60; 1941 c. 550 s. 24.

290.56 BOOKS AND RECORDS EXAMINED; TAKE TESTIMONY.

HISTORY. 1933 c. 405 s. 51; M. Supp. s. 2394-51.

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290.57 INCOME TAXES AND PRIVILEGE TAXES

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290.57 EXAMINERS.

HISTORY. 1933 c. 405 s. 52; M. Supp. s. 2394-52.

290.58 POWERS OF EXAMINERS.

HISTORY. 1933 c. 405 s. 53; M. Supp. s. 2394-53.

290.59 ADDITIONAL HELP.

HISTORY. 1933 c. 405 s. 54; M. Supp. s. 2394-54.

290.60 PAYMENT OF EXPENSES.

HISTORY. 1933 c. 405 s. 55; M. Supp. s. 2394-55; 1943 c. 115 s. 1.

290.61 PUBLICITY OF RETURNS.

HISTORY. 1933 c. 405 s. 56; Ex. 1937 c. 49 s. 31; M. Supp. s. 2394-56; 1941 c. 18 s. 5.

The commissioner or his employees may testify as to the files and returns in his office when required to do so by the court. 1936 OAG 373, Jan. 11, 1936 (428f).

The commissioner and his employees may use information for any purpose within scope of the commissioner's duty provided in using such information it is not divulged to outside persons. OAG March 9, 1938 (130b); OAG Feb. 19, 1929 (137b).

The state of Wisconsin is not entitled to any information with respect to Minnesota income tax returns. OAG Aug. 28, 1939 (531).

Reciprocal and retaliatory legislation. 21 MLR 371, 392.

290.62 DISTRIBUTION; REFUNDS.

HISTORY. 1933 c. 405 s. 57; 1935 c. 252; 1937 c. 122; 1937 c. 397; Ex. 1937 c. 49 s. 28; 1939 c. 438 s. 1; M. Supp. s. 2394-57; 1941 c. 445; 1943 c. 630 s. 1; 1943 c. 656 s. 29.

Income taxes collected for the taxable year of 1936 and prior years are distributed according to the provisions of Laws 1933, Chapter 405. The taxes for 1936 are not affected by the 1937 amendment. Board v Anderson, 205 M 77, 285 NW 80.

The distribution of the revenue derived from the income tax is entrusted to the state board of education and both distributions in one calendar year should be based on the school census of the preceding calendar year. 1934 OAG 346, July 19, 1934 (531i).

Income tax funds must be applied by school districts to the payment of principal and interest on bonded indebtedness. 1934 OAG 345, March 27, 1934 (531).

When a school district is dissolved and the territory becomes part of an unorganized district, the bonds of the dissolved district are not payable out of the income tax funds of the succeeding unorganized district. 1934 OAG 801, July 21, 1934 (531i).

As far as relates to income tax distribution, unorganized territory in each county is deemed a school district. 1934 OAG 803, June 6, 1934 (531i).

The county auditor need not deduct amounts to the state on state loans before making distribution to school districts. 1934 OAG 800, Nov. 13, 1934 (531L).

Where an organized school district administers unorganized territory and assumes certain indebtedness, income taxes allotted to the organized district should be used first to pay the indebtedness of the organized district and the surplus to pay the indebtedness of the administered territory. If the organized school district does not assume the liabilities of the administered territory, income tax receipts may not be used to pay the debts of the administered portion. OAG Nov. 3, 1937 (531g).

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Income tax receipts should be used to pay outstanding bonds and the surplus only may be used to pay outstanding emergency warrants. OAG Dec. 3, 1937 (159a-5).

Income tax receipts must be placed in the sinking fund and used to meet unmatured bonds until bonded indebtedness has been wiped out. Any surplus may be used to pay current operating expenses. OAG June 13, 1939 (531i).

The distribution of moneys to school districts as replacement for loss of money and credit taxes, is a revenue act, and only incidentally concerns the private rights of pupils. OAG Sept. 18, 1944 (159a-22).

290.623 INCOME TAX SCHOOL FUND; DISTRIBUTION.

HISTORY. 1945 c. 456.

290.65 EXEMPTIONS, MEMBERS OF ARMED FORCES.

HISTORY. 1943 c. 107 s. 1; 1945 c. 604 s. 15.

290.66 EXTENSION OF TIME.

HISTORY. 1945 c. 604 s. 31.

290.67 LIMITATION OF TIME EXTENDED.

HISTORY. 1945 c. 596 s. 4.

290.68 APPLICATION OF LAWS 1945, CHAPTER 410.

HISTORY. 1945 c. 410 s. 1.

290.91 DESTRUCTION OF INCOME.

HISTORY. 1945 c. 604 s. 27.