

CHAPTER 290

INCOME AND FRANCHISE TAXES MEASURED BY NET INCOME

290.01 DEFINITIONS.

Subd. 20, amended by L. 1947 c. 635 s. 1.

L. 1933, c. 405, as amended, and commonly called the state income tax law, was enacted for the benefit of the school districts of the state. The districts acquire an interest as soon as the obligation to pay the tax becomes due and owing to the state. The original act was not retroactive in effect. *Board of Education v Anderson*, 205 M 77, 285 NW 80.

The recipient of dividends from a holding company which are derived in part from dividends in national banks is in no more fortunate position of immunity from income taxation than the officers and employees of the state and national governments. A tax upon income is not required to be considered legally or economically as a tax on its source. *Irvine v Spaeth*, 210 M 496, 299 NW 204.

The provisions of the state income tax act were largely derived from the federal income tax laws, and any construction placed by the federal courts on the federal income tax laws should be considered in construing the state income tax provisions. *State v Stickney*, 213 M 92, 5 NW(2d) 351.

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

"Retroactive" and "retrospective" are synonymous in their application. The singular includes the plural and the plural the singular. Although the income tax is by some designated a property tax and by others a lieu tax, and even an excise tax, it is in many ways sui generis. *State v Industrial Tool Works*, 220 M 593, 21 NW(2d) 32.

A federal decision construing a federal income tax statute some years after the state law was enacted is not controlling in interpreting a state income statute; but where the state law is copied after the federal act, any prior interpretation of the federal act controls construction of state statute. *Sanders v Commissioner of Taxation*, 222 M 186, 23 NW(2d) 565.

Income due and payable to a taxpayer is taxable whether or not he chooses to enjoy it. *Sanders v Commissioner of Taxation*, 222 M 186, 23 NW(2d) 565.

Interest on coupons detached from bonds before maturity and given to a donee are taxable income of the donor, since the power to dispose of the income is equivalent to ownership of it, and the exercise of the power to procure its payment to another, whether to pay a debt or to make a gift, is within the reach of the statute taxing income "derived from any source whatever." The legislature did not distinguish between forced and voluntary sales of property in determining capital gains or losses from the sale or exchange of property, and to do so would be contrary to the purpose of the provision, as shown by its legislative history; that is, to restrict the deductibility of losses in parity with the increased taxation on capital gains for the purpose of increasing the revenue. *Drew v Commissioner*, MBTA Sept. 27, 1945 (214), 222 M 186, 23 NW(2d) 565.

A retail credit association which promoted common interests of retail merchants, extending credit to the public, educated the public in advantages of credit accounts, promoted greater use of credit, had no stock, paid no salaries, and received no profits, although dues were collected to pay expenses, was a "business

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league" within revenue act provisions granting exemption from income and excise profits taxes. Retail Credit Assn. v United States, 30 F. Supp. 855.

The federal soldiers' and sailors' civil relief act allowing personal property and income tax immunity to non-resident military persons stationed in Minnesota is valid and constitutional. OAG Feb. 28, 1946 (421-B-1).

Stock dividends as capital or income. 2 MLR 284.

Professional salary is income derived from property. 6 MLR 83.

Whether income tax is an excise or a property tax. 6 MLR 254.

State income tax and Minnesota constitution. 12 MLR 683.

Nature of the income tax. 17 MLR 126.

Minnesota state income tax. 18 MLR 93.

Federal revenue act of 1934. 19 MLR 63.

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

State income tax as diminution of judge's salary. 22 MLR 106.

Jurisdiction over the person when the income tax is assessed; jurisdiction when retroactive legislation is enacted. 22 MLR 746.

Taxation of income from exempt securities; impairment of contract. 22 MLR 888.

Immunity of governmental instrumentalities; income taxes of employees and officers. 22 MLR 903.

Comparative tax burdens as between corporations and partnerships. 23 MLR 506.

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

Income from assigned interests taxable to assignor. 25 MLR 536.

Allocation of business income for state income tax purposes. 25 MLR 851.

Federal taxing power and the income tax. 26 MLR 421.

Stock dividends as taxable income. 26 MLR 765.

Divorced wife taxable on income from annuity purchased by husband. 26 MLR 906.

Present taxable status of stock dividends under the federal tax law. 28 MLR 163.

Federal individual income tax act of 1944. 29 MLR 94.

Taxability of embezzled money. 30 MLR 308.

Income tax on family partnerships. 30 MLR 402.

Transfers in contemplation of death; motive to avoid estate tax. 30 MLR 550.

Income from assigned interests taxable to assignor. 30 MLR 648.

290.02 IMPOSITION OF PRIVILEGE TAX ON CORPORATIONS; MEASUREMENT.

Amended by L. 1947 c. 635 s. 2.

A state may not impose a tax on a foreign corporation commercially domiciled within its jurisdiction when such tax is based upon or measured by income from intangibles of such corporation which have not acquired a business situs there and which are unrelated in every respect to the local business of said corporation within said state. Such tax is invalid under the due process clause of the United States Constitution, Amendment XIV. Marshall-Wells v Commissioner, 220 M 458, 20 NW(2d) 93.

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During the taxable year 1941, the taxpayer excluded from its gross income interest received from United States bonds and treasury notes, contending that such interest income is exempt from all state taxation by federal statute, and if its tax is computed according to the provisions of section 290.03 (s. 3(a)), such interest income is specifically exempt by the provisions of section 290.08 (s. 12(g)). The commissioner properly contended that the taxpayer is subject to the privilege and franchise tax provisions of section 290.02 (s. 2(a)) and that such interest must be included in the income by which the tax is measured, and returned such interest income to taxable net income and assessed an additional tax against the taxpayer. *Duluth Dredging Co. v Commissioner, MBTA April 11, 1946 (251).*

Validity of state corporate franchise tax measured by non-taxable subject. 15 MLR 561.

Minnesota state income tax. 18 MLR 93.

The function of the entity in federal income taxation; recent developments. 25 MLR 189.

Income and excess profits tax provisions relating to corporations. 28 MLR 287.

290.03 CLASSES OF TAXPAYERS.

Taxpayer, a manufacturer of glass products, whose chief place of business is Toledo, Ohio, maintains a sales office in Minnesota, serving Minnesota and other states. Orders are forwarded from St. Paul to Toledo for acceptance, and filled direct from the factory to the customer. The commissioner properly held the taxpayer subject to the provisions of section 290.03, it being a foreign corporation owning property within the state and whose business in Minnesota consists exclusively of interstate commerce. The inclusion in the apportionment formula of the taxpayer's earnings from interstate commerce does not violate or offend against either the commerce clause or the due process clause of the federal constitution. *Owens-Illinois Glass Co. v Commissioner of Taxation, MBTA Sept. 24, 1946 (196).*

Taxpayers resided on their farm in Polk county from 1931 to 1941, when they rented it and worked in war industries on the west coast, returning to the farm in the fall of 1944. The commissioner, in view of the facts of record, properly held that the taxpayers were domiciled in Minnesota during 1942 and chargeable with income tax on their California earnings for that year. *Coulter v Commissioner, MBTA, Oct. 8, 1946 (257).*

Reciprocal and retaliatory legislation. 21 MLR 371.

Jurisdiction of domiciliary and non-domiciliary states to impose income taxes; multi-state taxation of the same taxable interest. 21 MLR 759.

Power of state to tax income of federal officer or federal auxiliary. 21 MLR 867.

State income tax; residency and domicile. 31 MLR 630.

290.05 EXEMPTIONS FROM TAX.

Amended by L. 1947 c. 635 s. 3.

The salary of the governor of a federal reserve bank is the means by which his services are procured and retained by the federal government. The state income tax upon that salary is a direct and palpable burden on the exertion of the government's sovereign power. The salary is immune from such taxation. *Geery v Minnesota Tax Commission, 202 M 366, 278 NW 594.*

The first bank stock corporation is a holding company, as such, through ownership of their stock, managing and operating a system of "chain banks," some of which are national banks. The codified immunity of such 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 such immunities. *Irvine v Spaeth, 210 M 489, 299 NW 204.*

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

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classification embodied in the law; and that classification is sufficient to validate a statute imposing taxes on federal savings and loan associations although credit unions and are specifically exempted from such taxes. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 568.

A retail credit association which promoted common interests of retail merchants, extending credit to the public, educated the public in advantages of credit accounts, promoted greater use of credit, had no stock, paid no salaries, and received no profits, although dues were collected to pay expenses, was a "business league" within revenue act provisions granting exemption from income and excise profits taxes. *Retail Credit Assn. v United States*, 30 F. Supp. 855.

Exemption of property from taxation in the United States. 18 MLR 411.

Validity of graduated rates and exemptions. 18 MLR 582.

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

Exemption of educational corporations. 26 MLR 763.

Exemptions of social clubs under section 101(9) of the federal income tax act. 27 MLR 98.

290.06 RATES OF TAX.

Subd. 1, amended by L. 1947 c. 635 s. 4.

Subd. 3, amended by L. 1947 c. 635 s. 4.

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.

Subd. 3, amended by L. 1947 c. 635 s. 5.

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, wherever the taxes are changed, between the old and the new rates. *Byard v Commissioner*, 209 M 215, 296 NW 10.

A Minnesota corporation was one of several owned by a Delaware corporation holding company. The group also operated a service corporation in Illinois. The service corporation was a non-profit corporation, and on that ground the profits growing out of the benefits to the Minnesota corporation by reason of the service of the Illinois corporation were chargeable as earnings to the Minnesota corporation. *Purity Baking Co., MBTA*, Aug. 30, 1945 (211) (212).

Taxpayer's income was largely derived from slot machine rentals and profits. The order of the commissioner is modified so that the net income is computed from 1943 at \$4,741.54. The discovery of additional income was through state examination of federal tax records. *Holbeck v Commissioner, MBTA*, June 26, 1947 (306).

Minnesota state income tax. 18 MLR 93.

Comparative tax burden, comparing partnership and corporate structures. 23 MLR 506, 612..

Federal interpretation of "substantial adverse interest" under federal sections 166 and 167. 25 MLR 249.

Allocation of business income for state income tax purposes. 25 MLR 851.

When the right to receive a dividend accrues. 25 MLR 961.

Income tax of dividends of holding company where the corporate income is immune from tax. 26 MLR 407.

Stock dividends as taxable income. 26 MLR 765.

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Divorced wife taxable on income from annuity purchased by husband. 26 MLR 906.

Liability of settlor for tax on trust income payable to divorced wife but expended in part for support of minor children. 27 MLR 99.

Present taxable status of stock dividends in federal law. 28 MLR 106, 163.

Real estate taxes as a capital expenditure. 28 MLR 135.

Taxation of embezzled money. 30 MLR 308.

Inclusion in gross estate of trust property in which beneficial life interest or possibility of reversion is reserved in the settlor. 31 MLR 278.

Stock dividends taxable to taxpayer using accrual accounting. 31 MLR 389.

290.074 LIQUIDATING FARM BUSINESS, SALE OF PERSONAL PROPERTY.

Repealed by L. 1947 c. 635 s. 21.

290.08 EXEMPTIONS FROM GROSS INCOME.

Amended by L. 1947 c. 635 s. 6.

The commissioner in assessing income tax liability determined that the aggregate premiums paid for the annuities was \$50,000 and that from the \$2,034.96 received by Ila M. Stewart as annuity payments in 1939 there should be excluded from gross income only \$534.96 which represents the excess of the amount received over an amount equal to three per cent of \$50,000, and in considering the income tax for 1940 a similar rule should apply. *Stewart v Commissioner, MBTA, Dec. 18, 1944 (158) (159).*

Increase in the value of land considered alone accrues at the time of sale of the land; but the measure of the amount of income realized by a lessor, upon the termination of a lease, by reason of succeeding to improvements made by the tenant is the fair market value at the time of repossession, and is taxable as income. (See later amendment.) *Pfeifer Realty v Commissioner, MBTA, Feb. 6, 1945 (163).*

The ascertainment of the time when a debt became worthless must be made by the taxpayer. The taxpayer is usually allowed a range of time after actual worthlessness within which to make ascertainment. Such ascertainment must be reasonable. *Foley v Reynolds, 58 F. Supp. 229.*

The burden of showing that corporate stock became worthless in a year claimed as a deduction, is on the taxpayer; and the loss resulting from corporate stock loss is deductible only in the year in which it in fact became worthless. *First Nat'l v United States, 58 F. Supp. 425.*

Deductibility of a bad debt for any income tax year is not dependent on whether taxpayer keeps books, and, if he kept no books, the charge-off may be mental. *Bush v United States, 61 F. Supp. 567.*

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

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

Settlor's liability for federal tax on trust income payable to divorced wife. 27 MLR 99.

290.081 RECIPROCITY.

See, *Drew v Commissioner, MBTA, Sept. 27, 1945 (214)*, and 222 M 186, 23 NW(2d) 565, noted under section 290.01.

Physical properties and money subsidies granted to a railroad company as income under income tax laws. 10 MLR 270.

290.09 DEDUCTIONS FROM GROSS INCOME.

Under the provisions of section 272.31 the lien for real estate taxes effective in favor of the state as of May 1 does not take effect as between grantor or grantee

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until the first Monday in January of the succeeding year. So, where taxes for 1936 are paid during 1937 by an owner who acquired title in 1936 the payment is deductible in the computation of his income tax for 1937. It is not a capital expenditure. *Spaeth v Hallam*, 211 M 156, 300 NW 600.

Expenditure in connection with tangible property outside of Minnesota, whether incurred pursuant to contract to organize a corporation and dispose the profits by use of dividend, or pursuant to an informal agreement or a mere intent to form a corporation should gold be found, are not deductible in income tax returns to the state of Minnesota. *State v Dancer*, 213 M 299, 6 NW(2d) 466.

Expenditures made for labor, material, and supplies in the performance of a dredging contract are "ordinary and necessary expenses" incurred a carrying on the business within the purview of section 13 of the income tax law and not an investment of capital assets. *Duluth-Superior Co. v Commissioner*, 217 M 346, 14 NW(2d) 439.

See, *Drew v Commissioner, MBTA*, Sept. 27, 1945 (214), and 222 M 186, 23 NW(2d) 565, noted under section 290.01.

Taxpayer claimed deduction on account of \$600 entertainment of customers. The commissioner requested additional information which he did not furnish. On appeal the taxpayer made no appearance. The commissioner properly imposed an additional tax, plus interest. Taxpayer's claim for deduction disallowed in toto. *MBTA*, Dec. 18, 1946 (273).

Where a solvent bank reorganizes under the provisions of L. 1933, c. 55, sets aside certain assets of the bank to take care of 40 per cent deferred indebtedness, and where at the end of ten years the trust paid out in full except for \$8,500, which sum the bank transferred from its assets to the trust fund in order that the creditors might be paid in full for the purpose of protecting the good will of the customers of the bank, said payment although not in payment of a legal obligation will not be considered a gift by the bank but an expense item in order to protect their good will. That transfer of \$8,500 from the assets of the bank to the trust fund in the year 1943 is deemed an expense item and a deductible item from the gross income of the bank or its owners. *MBTA*, March 20, 1947 (263).

Where a loss is claimed as deductible from gross income business of worthlessness of common stock, actual worthlessness must be established; and the right to claim a deduction from gross income is a statutory privilege, and the burden of proving losses within the statute rests upon the taxpayer. *Nelson v United States*, 131 F(2d) 301.

"Ordinary expense" deductible for tax sale in computing net income may be one which happens but once in a taxpayer's life time but a transaction giving rise to it must be of common and frequent occurrence in the type of business in which the expense was incurred. That a particular expense is an ordinary or common one in the course of one business does not necessarily make it so in connection with another. Whether an expense is an ordinary expense deductible in computing net income is affected by time, place, and circumstances and the nature of the expense depends, not upon fact that obligation to pay has arisen, but upon the kind of transaction out of which the obligation arose and its normalcy in the particular business in which it was incurred. *Deputy v DuPont*, 60 SC 389, 308 US 488; *Mullaly v Commissioner*, 131 F(2d) 509.

In case the city of Minneapolis adopts the plan authorized by L. 1947, c. 608, for a tax upon earned net income, any amount paid under the act is deductible from gross income in computing state income tax in the same manner as other taxes paid. OAG May 16, 1947 531-F).

Deductibility of amounts paid as additional compensation for services rendered prior to the tax year. 15 MLR 243.

Deductions from gross income. 18 MLR 145.

Reserves for contingent liabilities as a basis for deduction from gross income. 18 MLR 749.

Contributions by corporation to community chest as deductible in computing income. 20 MLR 44.

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Comparative tax burden as between corporations and partnerships. 23 MLR 506.

Date of accrual of Minnesota real estate tax for the purpose of income tax deductions. 26 MLR 567.

Ascertainment of worthlessness of bad debts. 26 MLR 759.

290.10 NON-DEDUCTIBLE ITEMS.

Amended by L. 1947 c. 635 s. 7.

290.11 INVENTORIES SHALL BE TAKEN IN CERTAIN CASES.

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 by devise, bequest, or inheritance from the decedent is in an inventory within the meaning of section 290.15 for purposes of determining gain or loss from a sale or disposition of such property. A fair market value of the property on January 1, 1933, was the basis for determining gain or loss. *State v Stickney*, 213 M 89, 5 NW(2d) 351.

290.12 GAIN AND LOSS ON SALES.

Prior to 1937, a donee of property acquired before January 1, 1933, was required to adopt a 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.

290.13 TRANSACTION IN WHICH GAIN OR LOSS IS NOT RECOGNIZED.

A corporation's receiver, reporting to the court sale of assets of the corporation, of which he was a stockholder and officer, without disclosing his previous arrangements with the purchaser to continue as stockholder and officer of a new corporation to be formed by them, may not be heard to say that there was a "reorganization" or "plan of reorganization" within income tax law 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.

290.14 BASIS FOR DETERMINING GAIN OR LOSS.

See, *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.

Ex. L. 1937, c. 49, s. 18, amending L. 1933, c. 405, s. 27, as applicable to building and loan associations, contains a provision allowing credit against net income "To each building and loan association organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid during the taxable year to its members as members." The tax commission adopted a regulation, which in effect eliminated the words "organized under the laws of this state." The commissioner had authority to eliminate the provision referred to, and that act with such elimination is valid. *State v Minnesota Federal*, 218 M 230, 15 NW(2d) 568.

Capital gains. 18 MLR 125.

290.16 DEDUCTIONS.

Amended by L. 1947 c. 635 s. 8.

Deductions from income are allowable only when clearly authorized by statute and in the instant case there is no statutory authority for the deduction claimed; and the rule that ambiguities are resolved in favor of the taxpayer does not apply. *State v Dancer*, 213 M 289, 6 NW(2d) 466.

Where a taxpayer loses property by forfeiture for non-payment of taxes a "loss through sale of capital assets" results. *Sanders v Commissioner of Taxation*, 222 M 186, 23 NW(2d) 565.

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See, *Drew v Commissioner, MBTA*, Sept. 27, 1945 (214), and 222 M 186, 23 NW(2d) 565, noted under section 290.01.

Where taxpayer as vendee entered into a contract to purchase realty giving vendor the right to declare a forfeiture of his interest if he failed to make stipulated payments, and the taxpayer having defaulted a forfeiture was declared by the vendor. Losses sustained by the vendee as a result of the forfeiture were sustained as a "sale or exchange" limiting to \$2,000 deductible losses. It was immaterial that the forfeiture occurred because of taxpayer's inability to pay. *Commissioner v Paulson*, -123 F(2d) 255.

Deductions from gross income. 18 MLR 149.

Apportionment of interest on corporation bonds by the estate of life tenant and remainder-man when life tenant dies before the interest payment is due. 18 MLR 754.

Deductions of bad debts. 27 MLR 477.

290.17 GROSS INCOME TO BE ALLOCATED.

A non-resident, an employee in Minnesota for a period in excess of 150 days, must include in his gross income salary paid while on a vacation outside of Minnesota since it was actually salary paid for services rendered in this state so far as income taxation is concerned. Plaintiff had his domicile in Wisconsin but was employed as land commissioner of a railway company with offices in St. Paul commuting daily between his home and his place of employment. *Hughes v Spaeth*, 207 M 577, 292 NW 194.

While generally a corporation can be domiciled only in the state of its incorporation the legislative purpose in Minnesota plainly requires that the word domicile used in section 23(b) of the state income tax law includes any corporation qualified to do business in Minnesota. *Canisteo v Spaeth*, 211 M 185, 300 NW 596.

See, *State v Dancer*, 213 M 289, 6 NW(2d) 466; *Duluth-Superior v Commissioner*, 217 M 346, 14 NW(2d) 439.

Dividend 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 of Minnesota under section 23(b) of the state tax law. *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728.

A state may tax any privilege extended by it and adopt any reasonable formula for its measurement, provided it does not require measurement thereof by property, or income from property not within its jurisdiction and not used in connection with or correlated to any business authorized or conducted there; but may not impose a tax on a foreign corporation commercially domiciled within its jurisdiction when such tax is passed upon or measured by income from intangibles of such corporation which have not acquired a business situs there and which are unrelated in every respect to the local business of said corporation within said state. *Marshall-Wells v Commissioner*, 220 M 459, 20 NW(2d) 92.

Entire income is properly assignable to the state of Minnesota of one who is a resident of Minnesota and a member of a partnership operating nationally, with its principal place of business in the city of New York and engaged in the practice of public accounting, which is a business consisting principally of the performance of personal or professional services. *Bechert v Commissioner of Taxation*, 221 M 65, 21 NW(2d) 101.

A partner in an accounting firm maintaining offices in several states, is manager of the Minneapolis office. He must pay income tax upon his salary, the interest he draws on invested capital, and on his distributive share of the profits of the group of offices. *In re Bechert, MBTA*, Nov. 15, 1944 (179).

Reciprocal and retaliatory legislation. 21 MLR 371.

Allocation of business income for state income tax purposes. 25 MLR 851.

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290.18 COMPUTATION OF NET INCOME.

See, *Duluth-Superior Co. v Commissioner*, 217 M 346, 14 NW(2d) 439.

Income tax; capital expenditure; business expense. 29 MLR 138.

290.19 ALLOCATION OF TAX.

See, *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728; *Duluth-Superior Co. v Commissioner*, 217 M 346, 14 NW 439; *Maytag v Commissioner*, 218 M 460, 17 NW(2d) 37.

Trust beneficiary is liable for tax on all income which she is entitled to receive during the years the income came due her whether she received it or not. *Eisenmenger v Commissioner*, 145 F(2d) 103.

During the year 1940, the taxpayer received royalty income for the use by others in their gasoline pumps of a patented computer mechanism which had been developed by, and was used in the manufacturing process of, The Wayne Pump Company. Taxpayer contends that the commissioner erred in holding this income was "from intangible property employed in such business" and in allocating the same to Minnesota under section 25 (section 290.19) of the Minnesota income and franchise tax act. It paid the tax and applied for a refund which, by the order appealed from, the commissioner denied. The order of the commissioner is affirmed. *Wayne Pump Co. v Commissioner, MBTA*, May 13, 1946 (222) (223) 224).

Taxpayer, a foreign corporation licensed to do business in Minnesota, was engaged generally in several states in the business of churning cream into butter, in the purchase of butter already churned, and in the sale of butter. During the taxable year 1941, taxpayer operated a plant in Minnesota where it purchased bulk butter, cut, ground, and pressed the same into packages of uniform weight and size and on occasions added coloring and salt to secure uniformity of mixture. Taxpayer did not churn any butter within the state. Its products were sold within and without the state. Taxpayer contends that it was engaged in the business of manufacturing personal property within the state and entitled to the benefit of the weighted factor formula provided for by L. 1933, c. 405, s. 25(a) (section 290.19), in making its income and franchise tax return. The commissioner refused to permit the taxpayer the use of the weighted factor formula for the reason that taxpayer's activities in Minnesota did not constitute manufacturing. The board affirmed the order of the commissioner. *Sugar Creek Creamery Co. v Commissioner, MBTA*, May 22, 1946 (240).

290.20 COMMISSIONER TO PRESCRIBE METHODS.

Amended by L. 1947 c. 635 s. 9.

See, *Maytag v Commissioner*, 218 M 460, 17 NW(2d) 37.

290.21 CREDITS AGAINST TAXABLE NET INCOME.

Amended by L. 1947 c. 635 s. 10.

The differences between federal savings and loan associations and credit unions is sufficient to sustain the classes which the legislature in the exercise of its discretionary power embodied in the law; and credit unions are exempt from income tax while savings and loan associations are not. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 568.

Deductions from gross income. 18 MLR 145.

Date of accrual of Minnesota real estate taxes for the purpose of income tax deductions. 26 MLR 567.

290.23 ESTATES OR TRUSTS; COMPUTATION OF NET INCOME; CREDITS; DEDUCTIONS.

Revocable trust taxable to settlor; transfer of right to state income. 15 MLR 129.

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Minnesota state income tax. 18 MLR 93.

Federal interpretation of "substantial adverse interest" under federal sections 166 and 167. 25 MLR 249.

290.26 COMPUTATION OF NET INCOME OF ESTATE OR TRUST:

Taxable net income. 18 MLR 153.

290.27 REVOCABLE TRUSTS.

Special cases. 18 MLR 160.

290.28 RESERVATION OF INCOME BY GRANTOR.

In determining whether grantor of trust may still be treated as owner of the corpus after trust has been established, under the statute defining "gross income," technical considerations, niceties of the law of trusts or convenience, or legal paraphernalia, constructed as a refuge from surtaxes should not obscure the basic issue; and where the husband declared himself trustee of securities under an agreement expiring in five years or on death of husband or wife, providing that net income should be held for the wife's benefit and paid to the wife in the husband's discretion, the husband should have extensive control of the corpus, and that on determination of the trust the corpus should go to the husband together with other provisions creating a mere temporary reallocation of the family income, the husband remained "owner" and hence was subject to income tax under the statute defining "gross income." *Helvering v Clifford*, 60 SC 554, 309 US 331.

Where father conveyed property to himself and wife in trust of his minor children the father was subject to income tax on the amount expended by the trustees for education of the children, on the ground that the expenditures were made to satisfy the father's legal obligations, and so the father procured and enjoyed the economic benefit of the income of the trust. *Mairs v Reynolds*, 120 F(2d) 857.

290.281 COMMON TRUST FUND NOT TAXED.

Power in beneficiary to modify or terminate the trust; taxation of trust income chargeable to beneficiary. 31 MLR 297.

290.29 TRANSFEREES AND FIDUCIARIES.

Income from assigned interests taxable to assignor. 25 MLR 537.

290.31 PARTNERSHIPS NOT TAXED.

Subdivision 1, amended by L. 1947 c. 635, s. 11.

Comparative tax burden as between corporations and partnerships. 23 MLR 506.

Family partnerships. 30 MLR 402.

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

"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, wherever the rates are changed, between the old and new rates." *Byard v Commissioner*, 209 M 215, 296 NW 10.

290.34 SPECIAL PROVISIONS FOR CORPORATIONS.

Right to tax a railway corporation on its income derived from services rendered by an affiliated corporation. 9 MLR 488.

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Validity of state corporate franchise tax measured by non-taxable subject. 15 MLR 561, 607.

Affiliation for purpose of taxing corporate income; consolidated returns. 15 MLR 607.

Special cases. 18 MLR 164.

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

Amended by L. 1947 c. 635 s. 19.

State taxation of national bank shares. 7 MLR 357.

290.361 TAX ON INCOME OF NATIONAL BANKS.

Subd. 2, amended by L. 1947 c. 635 s. 1.

"The First Bank Stock Corporation is a holding company, as such, through ownership of their stock, managing and operating a system of 'chain banks.' Some of the latter are national banks. The qualified immunity of such national banks from state taxation does not follow dividends on their shares through the First Bank Stock Corporation, so that dividends paid by it to residents of this state are, by so much as they pass on dividends of national banks, immune from the state income tax. The First Bank Stock Corporation is a 'non-conductor' of such immunity." *Irvine v Spaeth*, 210 M 489, 299 NW 204.

The commissioner concedes that L. 1945, c. 604, s. 22, (section 290.361), specifically allows as a deduction from gross income dividends paid on preferred stock to Reconstruction Finance Corporation, and that said law is retroactive so as to cover income for the year 1940. *Midway National v Commissioner*, MBTA, May 23, 1946 (198).

Refunds allowed on excise taxes imposed by section 290.361 must be satisfied out of the bank's excise tax collection only and cannot be used to offset or settle other taxes. OAG Dec. 20, 1943 (29-A-29).

Where the postal department rent fixtures owned by the bank such fixtures are not exempt from personal property tax. OAG June 8, 1945 (414-A-9).

State tax on national bank stock. 6 MLR 56, 219, 239; 7 MLR 357; 10 MLR 241.

Taxation problems in branch banking. 15 MLR 767.

290.37 WHO SHALL MAKE RETURNS.

Subd. 2, amended by L. 1947 c. 635 s. 18.

290.38 MARRIED WOMEN MAY MAKE SEPARATE RETURNS.

Taxable persons under Minnesota state income tax law. 18 MLR 103.

290.46 SHALL EXAMINE TAXPAYERS' RECORDS.

Amended by L. 1947 c. 635 s. 13.

290.48 COLLECTION OF TAX.

"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, although demanded, held sufficient. *State v Haglin*, 216 M 387, 13 NW(2d) 6."

See, *State v Minnesota Federal*, 218 M 230, 15 NW(2d) 568, noted under section 290.14.

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290.49 TIME FOR ASSESSMENT AND COLLECTION OF TAX.

Subd. 8, amended by L. 1947 c. 635 s. 14.

290.50 REFUNDMENT OF OVERPAYMENTS.

Subd. 1, amended by L. 1947 c. 635 s. 15.

Wrongful refusal by the state agency to order a refundment is not enforceable by mandamus. *State ex rel v Tax Commissioner*, 208 M 195, 293 NW 243.

Applicability of recoupment to action by wife for income tax refund where husband's deficiency is barred. 25 MLR 655.

290.52 ADMINISTRATION AND ENFORCEMENT.

The tax commission properly promulgated a rule eliminating the enforcement of a clause in a statute, said clause being clearly unconstitutional. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 568.

290.53 PENALTIES AND INTEREST.

Amended by L. 1947 c. 635 s. 16.

That the former state agency has heretofore erroneously allowed deductions similar to those claimed in the instant case is not controlling; but the taxpayer's reliance thereon in taking the deductions here involved entitles his estate to abatement of penalties. *State v Dancer*, 213 M 289, 6 NW(2d) 466.

Sufficiency of "reasonable" as an ascertainable standard of guilt in a criminal statute. 26 MLR 661.

290.62 DISTRIBUTION; REFUNDS.

Amended by L. 1947 c. 633 s. 18.

The school districts of the state under the state income tax law acquire an interest as soon as the obligation to pay the tax becomes due and owing to the state. *Board v Anderson*, 205 M 77, 285 NW 80.

A regulation by the state board of education providing that aid under the provisions of this section be paid at the end of each semester is valid. OAG May 11, 1943 (168).

The state board of education may make rules splitting state aid. 1944 OAG 125, May 11, 1943 (168).

Where there are no bonds outstanding issued prior to Jan. 1, 1933, a school district may use income tax receipts for current needs, thus reducing other tax levies. OAG April 13, 1945 (531-n).

If no school is held in the district there is no valid distribution of money. OAG June 6, 1945 (531-I).

290.623 INCOME TAX SCHOOL FUND; DISTRIBUTION.

Repealed by L. 1947 c. 633 s. 22.

290.65 EXEMPTIONS, MEMBERS OF ARMED FORCES.

Amended by L. 1947 c. 635 s. 17.

290.91 DESTRUCTION OF INCOME TAX RETURNS.

Amended by L. 1947 c. 92 s. 1.