

CHAPTER 292

GIFT TAXES

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292.01 GIFT TAX. Subdivision 1. Imposition. A tax is hereby imposed for each calendar year upon the transfer during such calendar year by any person, resident or non-resident, of property by gift.

Subd. 2. Situs of property. The tax, in the case of a person who is a resident of this state at the date of the transfer, shall be on all such transfers, if the property transferred has its situs within this state; and, for this purpose, intangible property shall be conclusively deemed to have its situs therein. The tax, in the case of a person who is a non-resident of this state at the date of such transfer, shall be on all such transfers, if the property transferred has its situs within this state.

Subd. 3. Nature of transfer and property. The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real, personal, or mixed, or tangible or intangible. When property is transferred by gift in trust or otherwise, and the rights, interest, or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon the transfer at the highest rate which, on the happening of any of the contingencies or conditions, would be possible under the provisions of this chapter.

Subd. 4. Transfer for benefit of donor; reserved power; death of donor. The tax shall not apply to a transfer of property in trust for the use and benefit of the donor nor to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power, other than by the donor's death, shall be considered to be a transfer by the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift.

Subd. 5. Retroactive effect. The tax shall not apply to such transfers made before the effective date of Laws 1937 (Extra Session), Chapter 70.

Subd. 6. Computation. The tax shall be computed in the manner and at the rates hereinafter provided.

Subd. 7. Joint tenancy. (1) The creation of a joint tenancy with right of survivorship in real property, either by one spouse alone or by both spouses, and additions to the value thereof in the form of improvements, reductions in the indebtedness thereon, or otherwise, shall not be deemed transfers of property for purposes of this chapter, regardless of the proportion of the consideration furnished by each spouse, unless the donor elects to have such creation of a joint tenancy treated as a transfer, as provided in paragraph (3).

(2) In the case of the termination of a joint tenancy, other than by reason of the death of a spouse, the creation of which, or additions to which, were not deemed to be transfers by reason of paragraph (1), a spouse shall be deemed to have made a gift to the extent that the proportion of the total consideration furnished by such spouse multiplied by the proceeds of such termination (whether in form of cash, property, or interests in property) exceeds the value of such proceeds of termination received by such spouse.

(3) The election provided by paragraph (1) shall be exercised by including such creation of a joint tenancy or additions made to the value thereof as a transfer by gift, to the extent such transfer constitutes a gift, determined without regard to this sec-

tion, in the gift tax return of the donor for the calendar year in which such joint tenancy was created or additions made to the value thereof, filed within the time prescribed by law irrespective of whether or not the gift exceeds the exclusion provided by section 292.04(6).

Subd. 8. Powers of appointment. (A) An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if:

(1) Such partial release occurred before November 1, 1951, or

(2) The donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(B) The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.

(C) For purposes of this subdivision, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power, hereafter in this subdivision referred to as the "possessor," his estate, his creditors, or the creditors of his estate; except that:

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person:

(a) If the power is not exercisable by the possessor except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment;

(b) If the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the possessor, may be possessed of a power of appointment, with respect to the property subject to the possessor's power, which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(c) If, after the application of clauses (a) and (b) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons, including the possessor, in favor of whom such power is exercisable.

For the purposes of clauses (b) and (c), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(D) If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to

the second power, be deemed a transfer of property by the individual possessing such power.

(E) The lapse of power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power, the rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) \$5,000, or

(2) Five percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(F) For the purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

[Ex1937 c 70 s 1; 1957 c 298 s 1; 1961 c 417 s 1; 1965 c 88 s 1] (2394-71)

292.02 PERSON. Wherever the word "person" is used in this chapter it shall include individuals, associations, joint stock companies, partnerships, and corporations wherever the context permits or requires it.

[Ex1937 c 70 s 1] (2394-71)

292.03 VALUATION OF GIFT. Subdivision 1. The full and true value of property at the date of its transfer by gift shall be its value for the purpose of computing the tax imposed by this chapter. Where property is transferred with donative intent for less than an adequate and full consideration in money or money's worth, then the amount by which its full and true value at the date of its transfer exceeds the value of the consideration shall be deemed a gift, and such excess shall be deemed the value of such gift for the purpose of computing the tax imposed by this chapter.

Subd. 2. The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being, shall be determined by the provisions of section 291.11, subdivision 2, as amended.

[Ex1937 c 70 s 2; 1961 c 348 s 1; 1965 c 45 s 51; 1971 c 768 s 3] (2394-72)

292.031 TAXATION OF DISCLAIMED INTERESTS. Subdivision 1. A disclaimer of an interest in real or personal property or of rights or powers relating to the same pursuant to the provisions of sections 501.211 and 525.532, or in the manner provided in subdivision 2 herein shall not be deemed to constitute a gift by the person so disclaiming for purposes of the gift tax imposed by this chapter, and acts amendatory thereof, even though such disclaimer may result in the transfer of some interest in the property in which the same existed to another person, the vesting of such interest or property in such other person or the enlargement of an interest or property right already possessed by such other person.

Subd. 2. An interest in real or personal property shall be treated as though such interest has been duly disclaimed in whole or in part pursuant to sections 501.211 or 525.532, provided that in the event of a court action over the validity of a gift or the mental capacity of a donor to make a gift or for any other cause, the court having jurisdiction of the matter has issued an order cancelling, modifying or otherwise altering the interests subject to the gift, either subsequent to a hearing on the merits or in accordance with an agreement between the parties prior to termination of the hearing. Nothing contained herein shall be construed as making any settlement between the parties effective as a disclaimer unless the court issues its order confirming and approving such settlement.

[1965 c 552 s 4; 1971 c 757 s 2]

292.04 EXEMPTIONS. The following transfers by gift shall be exempt from and excluded in computing the tax imposed by this chapter:

(1) Gifts to or for the use of the United States of America or any state or any political subdivision thereof for exclusively public purposes;

(2) Gifts to or for the use of any fund, foundation, trust, association, organization or corporation operated within this state for religious, charitable, scientific, literary, or educational purposes exclusively, including the promotion of the arts, or the conduct of a public cemetery, if no part thereof inures to the profit of any private shareholder

or individual. Gifts to or for the use of any corporation, fund, foundation, trust, or association operated for religious, charitable, scientific, literary, or educational purposes, including the promotion of the arts, or the conduct of a public cemetery, no part of which inures to the profit of any private shareholders or individual, shall be exempt, if at the date of the gift, the laws of the state under the laws of which the donee is organized or existing either (1) do not impose a gift tax in respect of property transferred to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of this state, or (2) contain a reciprocal provision under which gifts to a similar corporation, fund, foundation, trust, or association organized or existing under the laws of another state are exempt from gift taxes if such other state allows a similar exemption to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of such state;

(3) Gifts to a fraternal society, order, or association operating under the lodge system, but only if such gifts are to be used exclusively for the purposes designated in clause (2);

(4) Gifts to or for the use of posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized within the state of Minnesota and if such gifts are to be used exclusively for the purposes designated in clause (2);

(5) All property transferred, money, service, or other thing of value, paid, furnished, or delivered by any person, corporation, organization, or association to his or its employees, or to any organization of his or its employees, directly or indirectly, or to any person, firm, or corporation for them or it, including payments to cover insurance, sickness, and death benefits, pensions, relief activities, or to any other employees benefit fund of any kind, and medical service to such employees and their families;

(6) The first \$3,000 in value of gifts (other than of future interests in property) made to any person by the donor during any calendar year. No part of a gift to a minor donee shall be considered a gift of future interest in property for purposes of this clause if it complies with the provisions of the Minnesota uniform gifts to minors act, chapter 527, or if it is a transfer for the benefit of a minor, and if the property and income therefrom:

(a) May be expended by or for the benefit of the donee before his attaining the age of 18 years; and

(b) Will to the extent not so expended

(1) pass to the donee on his attaining the age of 18 years and

(2) in the event the donee dies before attaining the age of 18 years, be payable to the estate of the donee, or as he may appoint under a general power of appointment as defined in section 2514(C) of the Internal Revenue Code of 1954;

(7) Gifts to an employee stock ownership trust as defined in section 290.01, subdivision 5. Where the beneficiaries of a stock ownership trust include the transferor, his spouse, children, grandchildren, parents, siblings or their children, the amount of the exemption shall be reduced by the product of multiplying said amount by their percentage interest in the trust.

[*Ex1937 c 70 s 3; 1943 c 505 s 1,2; 1951 c 268 s 1; 1959 c 429 s 1; 1963 c 356 s 1; 1973 c 725 s 54; 1974 c 157 s 6; 1976 c 2 s 109*] (2394-73)

292.05 SPECIFIC EXEMPTIONS. Subdivision 1. **Particular donees.** The following specific exemptions shall be deducted in computing the amount of the gifts made to any single donee:

(1) \$10,000, if the donee is the wife or minor or dependent child as defined in section 291.005, either by blood or by adoption, of the donor;

(2) \$5,000, if the donee is the husband, an adult child, by blood or by adoption, other lineal descendant, a stepchild as defined in section 291.005, or any mutually acknowledged child of the donor, or lineal descendants of such adopted or mutually acknowledged children;

(3) \$3,000, if the donee is a lineal ancestor of the donor;

(4) \$1,000, if the donee is a class C donee, as specified in section 292.07;

(5) \$250, if the donee is a class D donee, as specified in section 292.07.

Subd. 2. Single exemption. The exemptions provided by this section shall be allowed once only with respect to gifts by the donor to the same donee; provided, that where the relationship of the donee to the donor changes between gifts, the exemption allowed after the change shall be the exemption applicable at the date of gift to the extent that it exceeds any exemption deducted under this section from prior gifts.

Subd. 3. Definition. The term "mutually acknowledged child," as used herein, means any child to whom the donor, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for ten years thereafter.

[*Ex1937 c 70 s 4; 1943 c 505 s 3; 1973 c 185 s 4*] (2394-74)

292.06 COMPUTATION OF TAX. The tax shall be based on the aggregate sum of the gifts made by the donor to the same donee in excess of the applicable annual exemptions and specific exemption. Net taxable gifts are here defined as the sum of gifts made by the donor to the same donee during any stated period of time in excess of the applicable annual exemptions and applicable specific exemption. For each calendar year the tax shall be an amount equal to the excess of (1) a tax, computed by applying the rates hereinafter set forth, to the net taxable gifts for such calendar year and for all preceding calendar years, over (2) a tax computed in like manner for all preceding calendar years; provided, that if the relationship of the donee to the donor changes between gifts, the tax on the gifts made subsequent to such change shall be computed as hereinbefore provided, but the rate shall be determined as follows: The rate shall be the rate applicable to the new relationship as provided in section 292.07, and shall be applied to the amount obtained by adding the net taxable gifts made after the change of relationship to the net taxable gifts made before the change of relationship.

[*Ex1937 c 70 s 5; 1943 c 505 s 4; Ex1959 c 70 art 5 s 1*] (2394-73)

292.07 RATES OF TAX. Subdivision 1. **Schedule to apply.** In computing the tax imposed by this chapter the schedule or rates specified in subdivisions (2) and (3) of this section shall apply.

Subd. 2. Rates for classes of donees. The rates on the net taxable gifts shall be (1) In the case of a Class A donee:

1 1/2 percent on that part of the first \$25,000 which exceeds the applicable exemption or exemptions specified in section 292.05, subdivision 1.

2 percent on the next \$25,000 or part thereof.

3 percent on the next \$50,000 or part thereof.

4 percent on the next \$50,000 or part thereof.

5 percent on the next \$50,000 or part thereof.

6 percent on the next \$100,000 or part thereof.

7 percent on the next \$100,000 or part thereof.

8 percent on the next \$100,000 or part thereof.

9 percent on the next \$500,000 or part thereof.

10 percent on the excess over \$1,000,000.

(2) In the case of a Class B donee:

2 percent on that part of the first \$25,000 which exceeds the applicable exemption or exemptions specified in section 292.05, subdivision 1.

4 percent on the next \$25,000 or part thereof.

6 percent on the next \$50,000 or part thereof.

7 percent on the next \$100,000 or part thereof.

8 percent on the next \$200,000 or part thereof.

9 percent on the next \$600,000 or part thereof.

10 percent on the excess over \$1,000,000.

(3) In the case of a Class C donee:

6 percent on that part of the first \$25,000 which exceeds the applicable exemption or exemptions specified in section 292.05, subdivision 1.

8 percent on the next \$25,000 or part thereof.

10 percent on the next \$50,000 or part thereof.

12 percent on the next \$50,000 or part thereof.

14 percent on the next \$50,000 or part thereof.

16 percent on the next \$100,000 or part thereof.

18 percent on the next \$100,000 or part thereof.

20 percent on the next \$100,000 or part thereof.

22 percent on the next \$500,000 or part thereof.

25 percent on the excess over \$1,000,000.

(4) In the case of a Class D donee:

8 percent on that part of the first \$25,000 which exceeds the applicable exemption or exemptions specified in section 292.05, subdivision 1.

10 percent on the next \$25,000 or part thereof.

12 percent on the next \$50,000 or part thereof.

14 percent on the next \$50,000 or part thereof.

16 percent on the next \$50,000 or part thereof.

18 percent on the next \$100,000 or part thereof.

20 percent on the next \$100,000 or part thereof.

22 percent on the next \$100,000 or part thereof.

26 percent on the next \$500,000 or part thereof.

30 percent on the excess over \$1,000,000.

Subd. 3. **Credits.** A tax credit shall be allowed, in computing gift taxes due under this act, to the following donees in the following amounts:

Wife of the donor....\$300

Minor child, dependent child as defined in section 291.005, or any minor legally adopted child of the donor....\$75

Husband, an adult child, by blood or by adoption, other lineal descendant, a stepchild as defined in section 291.005, or any mutually acknowledged child of the donor, or lineal descendants of such adopted, dependent or mutually acknowledged children or of a stepchild\$20

Lineal ancestors of the donor....\$60

Brother or sister of the donor, a descendant of such brother or sister, a wife or widow of a son of the donor, and the husband or widower of a daughter of the donor....\$30

Brother or sister of the father or mother of the donor, and a descendant of a brother or sister of the father or mother of the donor....\$40

All others....\$20

The credit provided by this subdivision shall be allowed once only with respect to gifts by the donor to the same donee, and shall apply only to offset tax which would otherwise be due on gifts made on or after January 1, 1959.

Subd. 4. **Maximum rates.** The tax shall in no case, exceed 35 percent of the full and true value of the net taxable gifts. If the tax imposed herein is assessed against and attempted to be collected from the donee, the tax shall in no case exceed 35 percent of the full and true value of the gift in excess of the applicable specific exemption after deducting therefrom any gift tax imposed by the United States government if such federal tax was assessed against and collected from the donee.

Subd. 5. **Classes of donees defined.** Class A donees shall include only the wife and minor or dependent child, as defined in section 291.005, of the donor, and a minor or dependent legally adopted child of the donor. Class B donees shall include only the husband of the donor, adult child, stepchild as defined in section 291.005, or adult legally adopted child and the lineal issue of such stepchild or adopted child, lineal descendants and ancestors of the donor, any child of the donor to whom he or she has

stood in the mutually acknowledged relation of parent for not less than ten years prior to the making of the gift if such relationship began at or before such child's fifteenth birthday and was continuous for ten years thereafter, and the lineal issue of such child. Class C donees shall include only a brother or sister of the donor, a descendant of such brother or sister, a wife or widow of a son of the donor, and the husband or widower of a daughter of the donor. Class D donees shall include all donees other than those includible in the foregoing classes.

[Ex1937 c 70 s 6; 1943 c 505 s 5; Ex1959 c 70 art 5 s 2-4; 1973 c 185 s 5,6; 1978 c 766 s 12,13] (2394-76)

292.08 RETURNS. Subdivision 1. **Requisites of return by donor.** Every person making any gifts other than those exempted by section 292.04(6) during that part of the calendar year 1937 subsequent to the effective date of Ex. Laws 1937, Chapter 70, or during any subsequent calendar year, shall make a return thereof to the commissioner of revenue. Such return shall be made on the form prescribed by the commissioner and shall contain a computation of the tax due under the provisions of this chapter. In the case of a donor dying without filing a required return the return shall be made on his behalf by his executor or administrator, if no representative is appointed in probate proceedings the return shall be filed by the donee; that of a person for whom or whose property a guardian has been appointed shall be made by the guardian of his person or his property or both; and that of a person employing any device to make gifts indirectly shall be made by him and by those in charge or in control of the agency or instrumentality through which such person is making gifts indirectly.

Subd. 2. **Time for filing and payment of tax.** The return required to be made under subdivision 1 of this section shall be filed with the commissioner of revenue on or before the fifteenth day of April of the calendar year immediately succeeding that for which the return is made, along with a remittance of the tax shown due on such return.

Subd. 3. **Time extended.** The commissioner of revenue may, whenever in his opinion good cause exists therefor, extend the time for filing any return required hereunder for not to exceed six months.

Subd. 4. **Assessment on failure to make return or on filing of incorrect or false return.** If any person required by this chapter to file a gift tax return shall fail to do so within the time prescribed by this chapter or by regulations under the authority thereof, or shall make, willfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the commissioner, file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof, plus the penalty and interest as provided. If such person shall fail within that time to file such return, or corrected return, the commissioner shall make for him a return, or corrected return, from the commissioner's own knowledge and from such information as he can obtain through testimony or otherwise and assess a tax, penalty and interest on the basis thereof, which tax, penalty and interest shall be paid within 60 days after the commissioner has mailed to such person a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of such person to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 5. **Return by donee.** The commissioner of revenue may, whenever necessary in his opinion to the effective enforcement of this chapter, require donees to file a return of gifts received by them, and such return may require such donees to report such information as is necessary to the effective enforcement of this chapter. Returns required hereunder shall be filed with the commissioner of revenue within 30 days after he has mailed notice and demand therefor to the last known address of the donee required to make such return.

Subd. 6. **Time effective.** Except as otherwise expressly provided by chapter 292, the amount of any tax assessed by that chapter shall be deemed to be the amount of tax as computed on the return filed unless within a period not later than three and one-half years after the return was filed (whether or not such return was filed on or after the date prescribed) the commissioner shall have prepared a notice of tax assessment and mailed same to the taxpayer. Notice of assessment shall be deemed to have been made within the meaning of this subdivision when a letter containing such notice has been mailed to the last known address of the person upon whom the assessment

is made. If a return of tax imposed by this chapter is filed before the last day prescribed by law for the filing thereof, the return shall be considered as having been filed on such last day for the purposes of this subdivision.

Subd. 7. **Evasion, omissions, extensions and corrections.** (a) In the case of a false or fraudulent return, with the intent to evade tax, or in case of an unlawful attempt in any manner to defeat or evade a tax imposed by this chapter, or in case of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time.

(b) Omissions — in the case where there is omitted from the return items subject to tax under this chapter, the tax on such omitted items may be assessed at any time.

In determining the items omitted, there shall not be taken into account any item which is omitted from the gift subject to tax, if such item is disclosed in the return or in a statement attached to the return in a manner adequate to apprise the commissioner of revenue of the nature and amount of such item.

(c) Where before the expiration of the time prescribed in subdivisions 6 and 7(a) for the assessment of the tax, the commissioner of revenue and the taxpayer shall consent in writing to the extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) Prior to the expiration of the period of limitations prescribed in subdivision 6 with respect to gifts subject to the tax imposed by this chapter, (1) where the value of the gift returnable to the United States treasury department under present federal law has been changed or corrected by the commissioner of internal revenue, the taxpayer or a proper representative of the taxpayer shall report such changed or corrected value to the commissioner of revenue and shall concede the accuracy of such determination or state wherein it is erroneous, (2) where a taxpayer has filed an amended gift tax return with the United States treasury department the taxpayer shall also file within 90 days thereafter a copy of such amended return with the commissioner of revenue, or (3) where the taxpayer and the United States treasury department have consented in writing to assessment of the tax after such time, the taxpayer shall notify the commissioner of revenue in writing to the extension of time so agreed upon.

(e) Notwithstanding other provisions of this chapter, the statute of limitations for the assessment of tax under this chapter shall not terminate prior to 90 days after the taxpayer, whenever required to do so, has complied with the provisions of (d) of this subdivision in the manner prescribed therein.

(f) In any case where a gift tax return has been filed prior to the effective date of Laws 1961, Chapter 492, and on or subsequent to January 1, 1956, such return shall be deemed to have been filed on the effective date of Laws 1961, Chapter 492.

[*Ex1937 c 70 s 7; 1943 c 505 s 6; 1949 c 715 s 1; 1957 c 777 s 1,2; 1961 c 492 s 2; 1963 c 664 s 1; 1973 c 582 s 3; 1978 c 767 s 25*] (2394-77)

292.09 ASSESSMENT. Subdivision 1. **Liability under assessment; collection; suit against resident or non-resident.** The tax shall become a personal liability of the person upon whom it is assessed, if such person is a resident of this state, from the date of its assessment, shall remain such until such tax is paid, and may be collected by an action at law, in the name of this state, which may be brought in the district court of the judicial district in which such person resides or has his principal place of business, or in the district court for Ramsey county. The foregoing provisions shall also apply where such person is a non-resident of this state, so far as that is permissible under the provisions of the constitutions of the United States and this state.

Subd. 2. **Personal liability; filing lien; certificate of release.** If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. At any time after any transfer taxable hereunder is made which includes any real property, the commissioner of revenue may file with the county recorder of the county in which such real property is located a claim of lien for the estimated amount of the tax due hereunder describing the real property against which such lien is claimed, and may supplement or amend such claim after the amount of tax has been determined. From the time of the filing of the lien until it is satisfied by the commissioner of revenue, the tax imposed hereunder shall be a lien upon such real property. If the commissioner of revenue is satisfied that the tax liability has been

duly discharged or provided for, he may, under regulations prescribed by him, issue a certificate releasing any or all of such real property from the lien herein imposed.

Subd. 3. **Collection from donee.** If the donor shall fail to pay the tax within the time provided in this chapter, the commissioner of revenue may serve a notice upon the donee stating the amount of the tax and the date when it became due. If the tax is not paid within 60 days after the mailing of the notice to the donee at the address given in the return or the last known address of the donee, the tax may be collected from such donee in the same manner as provided with respect to donors in subdivision 1 or in an ordinary action at law.

[*Ex1937 c 70 s 8; 1943 c 592 s 1; 1963 c 664 s 2; 1965 c 51 s 65; 1973 c 582 s 3; 1976 c 181 s 2; 1978 c 767 s 26*] (2394-78)

292.10 [Repealed, 1963 c 664 s 8]

292.105 COMPOUNDING OF TAXES. The commissioner is hereby authorized and empowered to enter into an agreement with the donor or donee of any property the transfer of which is subject to the tax imposed by this chapter in any case in which such transfer provides for or results in the creation of remainders or expectant estates of such nature or so disposed or circumstanced that the tax payable in respect of such transfer, the identity of any donee of the property transferred, or the nature or value of the interest of any donee in such property is not ascertainable under the provisions of this chapter at the time fixed for the determination and assessment of such tax; and the commissioner is authorized and empowered by and in such agreement to compound the tax upon such transfer upon such terms as are deemed equitable and expedient, and to grant a discharge to any such donor or donee on account of such transfer upon payment of the tax provided in such agreement; but no such agreement shall be conclusive in favor of a donor or donee a party thereto as against a donor or donee not a party thereto unless the latter consent to such agreement, either personally or by duly authorized attorney, when competent, or by guardian. Agreement made, effected, and entered into under the provisions of this section shall be executed in duplicate, and one copy thereof shall be filed in the office of the commissioner and the other copy delivered to the person paying the tax thereunder.

[*1945 c 495 s 1; 1973 c 183 s 1*]

292.11 [Repealed, 1975 c 377 s 41]

292.111 PENALTIES, INTEREST, CRIMINAL LIABILITY. Subdivision 1. If any tax imposed by this chapter is not paid within the time specified for payment, or within 30 days after final determination of an appeal to the appropriate judicial forum, a penalty equal to ten percent of the unpaid tax shall be added to the tax.

Subd. 2. In case of any failure to make and file a return within the time prescribed or an extension thereof, unless it is shown that such failure is not due to willful neglect, a penalty of ten percent shall be added to the tax if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. This penalty shall be in lieu of the penalty provided in subdivision 1.

Subd. 3. If any person with willful intent to evade the tax imposed by this chapter shall fail to file any return required by this chapter or shall with such intent file a false or fraudulent return, a penalty of 50 percent of any tax found to be due (less any amounts paid on the basis of such false or fraudulent return) shall be imposed. This penalty shall be in addition to any other penalties, civil or criminal, provided in this section.

Subd. 4. In addition to the penalties hereinbefore described, any person who knowingly fails to file a return at the time required by this chapter shall be guilty of a misdemeanor. Any person who willfully files a false return with intent to evade such taxes shall be guilty of a gross misdemeanor. The term "person" includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

Subd. 5. The commissioner shall have the power to abate penalties when in his judgment their enforcement would be unjust and inequitable, subject to the approval of the attorney general if the abatement exceeds \$500.

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Subd. 6. The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. All interest and penalty shall be added to the tax and collected as a part thereof.

[1975 c 377 s 27]

292.112 EXTENSION TO FILE OR PAY. The commissioner may extend the time for filing returns or making payment of the tax, without penalty, for a period not to exceed six months. Where an extension of time has been granted, interest shall be payable at the rate specified in section 270.75 from the date when such payment should have been made, if no extension had been granted, until such tax is paid.

[1975 c 377 s 28]

292.12 REFUNDMENT. Subdivision 1. **Amount; manner.** The commissioner of revenue shall determine the amount of any taxes paid by, or collected from, any person in excess of the amount of tax legally due from him under the provisions of this chapter if claim therefor is filed with the commissioner of revenue within two years after such tax was paid or collected or three and one-half years after the return was filed, whichever is later. Upon the filing of such claim in the manner prescribed by him the commissioner shall make a written order thereon denying or allowing the claim in whole or in part and shall mail a copy of such order to the claimant at the address stated on the claim. He shall cause to be refunded in the same manner provided by law the amount of tax paid or collected in excess of the amount legally due, plus interest thereon at the rate of six percent per annum from the date of the payment or collection of the tax until the date the refund is paid. The amount necessary to pay such refunds is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, and the commissioner of finance shall issue warrants therefor out of any funds in the state treasury not otherwise appropriated. No refund shall be denied merely because the tax was voluntarily paid or no protest made to its payment. Refund shall not be made of taxes collected by the methods provided in Minnesota Statutes 1945, Section 292.09, Subdivision 1, or Section 271.06.

Subd. 2. **Denial of claim; suit by taxpayer.** If the claim is denied in whole or in part, the taxpayer may commence an action against the commissioner to recover any overpayments of taxes claimed to be refundable, but for which the commissioner has issued no certificate of refundment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or if an estate or trust, of the principal place of its administration, or in the district court for Ramsey County. Such action may be commenced after the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. If the commissioner has not acted within two years after the claim is filed it shall be considered denied.

[Ex1937 c 70 s 11; 1943 c 592 s 2; 1947 c 532 s 1; 1963 c 664 s 6; 1973 c 582 s 3; 1975 c 377 s 29] (2394-81)

292.125 TRANSFER BY GIFT; REFUNDMENT OF TAX PAYMENTS. In the case of a transfer in respect of which a tax is imposed by section 292.01, if by reason of a contingency or condition occurring after such transfer an interest in property which resulted from or was created by such transfer be abridged or diminished or become vested in a person a transfer to whom is not subject to tax or is taxable at a rate lower than a rate theretofore applied, refund shall be made of the excess, if any, of the tax paid on such transfer over the amount of tax that would have been payable had the tax on such transfer been determined on the basis that such contingency or condition had occurred. Such refund shall bear interest at the rate of six percent per annum from the time of payment of the tax, and shall be made only if a claim therefor be filed with the commissioner of revenue within two years after the occurrence of such contingency or condition. Except as otherwise provided in this section, the refund shall be made as provided in section 292.12, and any person aggrieved by a denial by the commissioner of any such claim may appeal therefrom.

[1945 c 496 s 1; 1973 c 582 s 3; 1978 c 766 s 14]

292.13 [Repealed, 1947 c 532 s 2]

292.14 CREDIT AGAINST INHERITANCE TAX. If a tax has been imposed on any gift under this chapter and thereafter upon the death of the donor an inheritance tax is imposed upon the same gift by this state, there shall be credited against the inheritance tax resulting from the inclusion of such gift in the computation of such inheritance tax an amount equal to the gift tax resulting from the inclusion of such gift in the computation of the gift tax on gifts from such donor to the donee who received such gift.

[*Ex1937 c 70 s 13*] (2394-83)

292.15 POWERS OF COMMISSIONER OF REVENUE. The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this chapter. He may, from time to time, make, publish, and distribute rules and regulations in enforcing its provisions. In his discretion he may make a charge for copies distributed upon request. He shall cause to be prepared blank forms for the returns required by this chapter, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him under the provisions of this chapter.

[*1963 c 664 s 7*]