Inheritance, Gift, Income, Excise Taxes

CHAPTER 290

INCOME AND EXCISE TAXES

290.01 Definitions.
290.011 Public policy.
290.012 Definitions.
290.013 Items not to be taken into account repeatedly.
290.02 Excise tax on corporations; imposition, measurement.
290.03 Income tax; imposition, classes of taxpayers.
290.032 Lump sum distribution tax.
290.04 Liability for tax.
290.05 Exempt individuals, organizations, estates, trusts.
290.06 Rates of tax; credits against tax.
290.067 Dependent care credit.
290.07 Net income; computation, accounting period.
290.071 Income from United States bonds, long term projects, invention or artistic work, back pay, bad debts, contract damages.
290.073 Gross income, commodity credit loans.
290.075 Renegotiated war contracts.
290.076 Income from services of child, where included.
290.077 Income in respect of decedents.
290.0781 Certain stock options.
290.079 Interest on certain deferred payments.
290.08 Exemptions from gross income.
290.081 Income of nonresidents, reciprocity.
290.082 Credit for occupation tax on the mining or production of copper-nickel ores.
290.085 Gross income, dividends from state and national banks.
290.09 Deductions from gross income.
290.091 Minimum tax on preference items.
290.095 Operating loss deduction.
290.10 Nondeductible items.
290.101 Denial of deductions relating to substandard buildings.
290.11 Determination of income, inventories.
290.12 Gain or loss on disposition of property, computation.
290.13 Gain or loss on disposition of property, recognition.
290.131 Distributions by corporations; effects on recipients.
290.132 Distributions by corporations; effects on corporation.
290.133 Definitions, constructive ownership of stock.
290.134 Corporate liquidations; effects on recipients.
290.135 Corporate liquidations; effects on corporation.
290.136 Corporate organizations and reorganizations.
290.137 Insolvency reorganization.
290.138 Carryovers.
290.139 Basis and adjustments for certain years.
290.14 Gain or loss on disposition of property, basis.
290.15 Gain or loss on disposition of property, basis of property acquired before January 1, 1933.
290.16 Depreciation, basis; gain or loss on disposition of property, how taken into account in computing net income.
290.165 Interest on reverse mortgage loans; how taken into account in computing net income.
290.17 Gross income, allocation to state.
290.18 Taxable net income, adjusted gross income; computation.
290.19 Net income; allocation to state, methods.
290.20 Net income; allocation to state, petition for other methods.
290.21 Credits against taxable net income.
290.22 Estates and trusts, imposition of tax.
290.23 Estates and trusts; computation of net income, credits; deductions.
290.24 Estates or trusts, personal credit.
290.25 Trusts; grantor treated as substantial owner.
290.26 Employees' trust, annuity plans.
290.27 Revocable trusts, income taxable to grantor.
290.28 Estates and trusts; income for benefit of grantor, others treated as substantial owner, divorce and separation payments.
290.281 Common trust fund.
290.29 Transferees, fiduciaries; liability, time limit, notice.
290.30 Fiduciaries, duty to pay tax.
290.31 Partnerships; individual liability of partners.
290.311 Partnership gross income.
290.32 Taxes for part of year, computation.
290.33 Taxable year extending into calendar years affected by different laws.
290.34 Corporations, special provisions.
290.35 Insurance companies; report of net income; computation of amount of income allocable to state.
290.36 Investment companies; report of net income; computation of amount of income allocable to state.
290.361 National and state banks; imposition of excise tax, computation, surtax.
290.37 Filing requirements for individuals.
290.38 Joint returns of husband and wife.
290.39 Return; form and filing.
290.391 Amended returns.
290.40 Annual return, exceptions.
290.41 Information returns.
290.42 Filing returns, date.
290.43 Returns, where filed.
290.431 Non-game wildlife checkoff.
290.44 Payment of tax, who must pay.
290.45 Payment of tax, time for.
290.46 Examination of returns; assessments, refunds.
290.47 Assessment; failure to file return, false or fraudulent return filed.
290.48 Delinquent taxes, collection.
290.49 Time limit on assessment, collection.
290.50 Overpayments, claims for refund or credits.
290.501 Claim for refund of sales tax.
290.51 Agreements.
290.52 Administration, enforcement.
290.53 Penalties, interest.
290.54 Tax a personal debt.
290.56 Examination of taxpayer's records; federal returns; extensions.
290.57 Examiners, appointment of.
290.58 Examiners, powers of.
290.59 Additional help.
290.60 Expenses of administration.
290.61 Publicity of returns, information.
290.611 Disclosure of contents of tax returns prohibited in certain instances; penalty.
290.612 Inquiries related to applications for liquor licenses.
290.62 Distribution of revenues.

290.65 Time limits; penalties.
290.91 Destruction of returns.
290.92 Tax withheld at source upon wages.
290.93 Declaration of estimated tax.
290.931 Declarations of estimated income tax by corporations.
290.932 Time for filing declarations of estimated income tax by corporations.
290.933 Installment payments of estimated income tax by corporations.
290.934 Failure by corporation to pay estimated income tax.
290.935 Payment on account.
290.936 Overpayment of estimated tax.
290.97 Contracts with state; withholding.
290.971 Election of certain small business corporations as to taxable status; definitions.
290.972 Election by small business corporation.
290.973 Corporation taxable income taxed to shareholders.
290.974 Return of electing small business corporation.
290.975 Classification of income.

290.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 1a. **Uniform probate code.** The definitions set forth in section 524.1-201, wherever appropriate to the administration of the provisions of this chapter, are incorporated by reference herein.

Subd. 2. **Person.** The term "person" includes individuals, fiduciaries, estates, and trusts, and partnerships not included in the definition of corporations and may, where the context requires, include corporations as herein defined.

Subd. 3. **Partnership.** The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

Subd. 4. **Corporations.** The term "corporation" shall include joint stock companies and corporations existing under the laws of any state or country; partnerships, limited or otherwise, the organization of which is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and the management of which is centralized in one or more persons acting in a representative capacity; associations (other than ordinary partnerships) and common-law trusts organized or conducted for profit.

Subd. 5. **Domestic and foreign corporations.** The term "domestic" when applied to a corporation means a corporation created or organized in Minnesota or under its laws; and the term "foreign" when thus applied means a corporation other than a domestic corporation. The existence of any domestic corporation shall be deemed the exercise by it of the privilege of existing as a corporation; the grant to any foreign corporation of the right to engage in transacting local business within this state shall be deemed the grant to it of the privilege of transacting such business within this state in corporate or organized form; and the transaction of the local business within this state by any foreign corporation shall be deemed the transaction of such business within this state in corporate or organized form.

Subd. 6. **Taxpayer.** The term "taxpayer" means any person or corporation subject to a tax imposed by this chapter.

Subd. 7. **Resident.** The term "resident" means any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such tax year, have been domiciled outside the state.

Subd. 7a. **Resident estate.** Resident estate means the estate of a deceased person where (a) the decedent was domiciled in Minnesota at the date of his death, or (b) the personal representative or fiduciary was appointed by a Min-

nesota court in a proceeding other than an ancillary proceeding, or (c) the administration of the estate is carried on in Minnesota in a proceeding other than an ancillary proceeding.

Subd. 7b. **Resident trust.** Resident trust means a trust except a grantor type trust which is administered in this state. The term "grantor type trust" means a trust where the income or gains of the trust are taxable to the grantor or others treated as substantial owners under sections 671 to 678 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

Subd. 8. **Fiduciary.** The term "fiduciary" means a guardian, trustee, receiver, conservator, personal representative, or any person acting in any fiduciary capacity for any person or corporation.

Subd. 8a. **Personal representative.** The term "personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

Subd. 9. **Taxable year.** The term "taxable year" means the period for which the taxes levied by this chapter are imposed. It shall be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which such return is made.

Subd. 10. **Fiscal year.** The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by section 290.40(2), the term means the annual period (varying from 52 to 53 weeks) so elected.

Subd. 11. **Paid or incurred, paid or accrued, received, or received or accrued.** The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which net income is computed for the purposes of the taxes imposed by this chapter; and the terms "received" and "received or accrued" shall be similarly construed.

Subd. 12. **Stock or share.** The term "stock" or "share" means the interest of a member in a corporation however evidenced.

Subd. 13. **Stockholder or shareholder.** The term "stockholder" or "shareholder" means the owner of any such "stock" or "share."

Subd. 14. **State or this state.** The term "state" or "this state" means the state of Minnesota.

Subd. 15. **Includes.** The term "includes" and its derivatives, when used in a definition contained in this chapter, shall not exclude other things otherwise within the meaning of the term defined.

Subd. 16. **Commissioner.** The term "commissioner" means the commissioner of revenue of the state of Minnesota.

Subd. 17. **Property.** The term "property" includes every form of property, real, personal, or mixed, tangible or intangible, and every interest therein, legal or equitable, irrespective of how created or arising. Property pledged or mortgaged shall be treated as owned by the pledgor or mortgagor.

Subd. 18. **Duty on estate or trust.** When, in this chapter, the estate of a decedent or a trust is referred to as a taxable person, or a duty is imposed on such estate or trust, the reference may be construed as meaning the fiduciary in charge of the property of such estate or trust, and the duty shall be treated as imposed on such fiduciary.

Subd. 19. **Net income.** The term "net income" means the gross income, as defined in subdivision 20, less the deductions allowed by section 290.09.

Subd. 20. **Gross income.** Except as otherwise provided in this chapter, the term "gross income," as applied to corporations includes every kind of compensation for labor or personal services of every kind from any private or public

employment, office, position or services; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealing in, property; income derived from the transaction of any trade or business; and income derived from any source; except that gross income shall not include "exempt function income" of a "homeowners association" as those terms are defined in Section 528 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

The term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this section.

(i) The Internal Revenue Code of 1954, as amended through December 31, 1974, shall be in effect for the taxable years beginning after December 31, 1974.

(ii) The Internal Revenue Code of 1954, as amended through December 31, 1976, including the amendments made to section 280A (relating to licensed day care centers) in H.R. 3477 as it passed the Congress on May 16, 1977, shall be in effect for the taxable years beginning after December 31, 1976. The provisions of the Tax Reform Act of 1976, P.L. 94-455, which affect adjusted gross income shall become effective for purposes of this chapter at the same time they become effective for federal income tax purposes. Section 207 (relating to extension of period for nonrecognition of gain on sale or exchange of residence) and section 402 (relating to time for making contributions to pension plans of self employed people) of P.L. 94-12 shall be effective for taxable years beginning after December 31, 1974.

The provisions of section 4 of P.L. 95-458, and sections 131, 133, 134, 141, 152, 156, 157, and 405 of P.L. 95-600 (relating to pensions, individual retirement accounts, deferred compensation plans, and to the sale of a residence) shall be effective at the same time that these provisions became effective for federal income tax purposes.

(iii) The Internal Revenue Code of 1954, as amended through December 31, 1979, shall be in effect for taxable years beginning after December 31, 1979.

For taxable years beginning after December 31, 1980 and before January 1, 1983, the provisions of section 404 (relating to partial exclusions of dividends and interest received by individuals) of the Crude Oil Windfall Profit Tax Act of 1980, P.L. 96-223, shall apply.

References to the Internal Revenue Code of 1954 in clauses (a), (b) and (c) following shall mean the code in effect for the purpose of defining gross income for the applicable taxable year.

(a) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than Minnesota or a political subdivision of any other state exempt from federal income taxes under the Internal Revenue Code of 1954;

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

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

(4) Interest on indebtedness incurred or continued to purchase or carry securities the income from which is exempt from tax under this chapter, to the extent deductible in determining federal adjusted gross income;

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

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

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

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

(8) In the case of property disposed of on or after January 1, 1973, the amount of any increase in the taxpayer's federal tax liability under section 47 of the Internal Revenue Code of 1954 to the extent of the credit under section 38 of the Internal Revenue Code of 1954 that was previously allowed as a deduction either under section 290.01, subdivision 20 (b) (7) or under section 290.09, subdivision 24;

(9) Expenses and losses arising from a farm which are not allowable under section 290.09, subdivision 29;

(10) Expenses and depreciation attributable to substandard buildings disallowed by section 290.101;

(11) The amount by which the gain determined pursuant to section 41.59, subdivision 2 exceeds the amount of such gain included in federal adjusted gross income;

(12) To the extent deducted in computing the taxpayer's federal adjusted gross income for the taxable year, losses recognized upon a transfer of property to the spouse or former spouse of the taxpayer in exchange for the release of the spouse's marital rights;

(13) Interest income from qualified scholarship funding bonds as defined in section 103(e) of the Internal Revenue Code of 1954, if the nonprofit corporation is domiciled outside of Minnesota;

(14) Exempt-interest dividends, as defined in section 852(b)(5)(A) of the Internal Revenue Code of 1954, not included in federal adjusted gross income pursuant to section 852(b)(5)(B) of the Internal Revenue Code of 1954, except for that portion of exempt-interest dividends derived from interest income on obligations of the state of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;

(15) The amount of any excluded gain recognized by a trust on the sale or exchange of property as defined in section 641(c)(1) of the Internal Revenue Code of 1954;

(16) An amount equal to one-sixth of any gain from the sale or other disposition of property deducted under sections 1202(a) and 1202(c)(1) of the Internal Revenue Code of 1954;

(17) To the extent not included in the taxpayer's federal adjusted gross income, the amount of any gain, from the sale or other disposition of property

having a lower adjusted basis for Minnesota income tax purposes than for federal income tax purposes. This modification shall not exceed the difference in basis. If the gain is considered a long term capital gain for federal income tax purposes, the modification shall be limited to 50 percent of the portion of the gain. This modification is limited to property that qualified for the energy credit contained in section 290.06, subdivision 14, and to property acquired in exchange for the release of the taxpayer's marital rights contained in section 290.14, clause (9);

(18) The amount of any loss from a source outside of Minnesota which is not allowed under section 290.17 including any capital loss or net operating loss carryforwards or carrybacks resulting from the loss; and

(19) The amount of a distribution from an individual housing account which is to be included in gross income as required under clause (c) of section 290.09, subdivision 30.

(b) Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

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

(2) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to 50 per centum of the portion of the gain. This modification shall not be applicable if the difference in basis is due to disallowance of depreciation pursuant to section 290.101.

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

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

(5) If included in federal adjusted gross income, the amount of any credit received, whether received as a refund or credit to another taxable year's income tax liability, pursuant to chapter 290A, and the amount of any overpayment of income tax to Minnesota, or any other state, for any previous taxable year, whether the amount is received as a refund or credited to another taxable year's income tax liability;

(6) To the extent included in federal adjusted gross income, or the amount reflected as the ordinary income portion of a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, notwithstanding any other law to the contrary, the amount received by any person (i) from the United States, its agencies or instrumentalities, the Federal Reserve Bank or from the state of Minnesota or any of its political or governmental subdivisions or from any other state or its political or governmental subdivisions, or a Minnesota volunteer firefighter's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or (ii) as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 405, 408, 409 or 409A of the Internal Revenue Code of 1954. The maximum amount of this subtraction shall be $11,000 less the amount by which the individual's federal adjusted gross income, plus the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of

1954, exceeds $17,000. In the case of a volunteer firefighter who receives an involuntary lump sum distribution of his pension or retirement benefits, the maximum amount of this subtraction shall be $11,000; this subtraction shall not be reduced by the amount of the individual's federal adjusted gross income in excess of $17,000;

(7) In the case of property acquired on or after January 1, 1973, the amount of any credit to the taxpayer's federal tax liability under section 38 of the Internal Revenue Code of 1954 but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(8) To the extent included in the taxpayer's federal adjusted gross income for the taxable year, gain recognized upon a transfer of property to the spouse or former spouse of the taxpayer in exchange for the release of the spouse's marital rights;

(9) The amount of any distribution from a qualified pension or profit sharing plan included in federal adjusted gross income in the year of receipt to the extent of any contribution not previously allowed as a deduction by reason of a change in federal law which was not adopted by Minnesota law for a taxable year beginning in 1974 or later;

(10) Interest, including payment adjustment to the extent that it is applied to interest, earned by the seller of the property on a family farm security loan executed before January 1, 1982 that is guaranteed by the commissioner of agriculture as provided in sections 41.51 to 41.60;

(11) The first $3,000 of compensation for personal services in the armed forces of the United States or the United Nations, and the next $2,000 of compensation for personal services in the armed forces of the United States or the United Nations wholly performed outside the state of Minnesota. This modification does not apply to compensation defined in clause (b)(6);

(12) The amount of any income earned for personal services rendered outside of Minnesota prior to the date when the taxpayer became a resident of Minnesota. This modification does not apply to compensation defined in clause (b)(6);

(13) In the case of wages or salaries paid or incurred on or after January 1, 1977, the amount of any credit for employment of certain new employees under sections 44B and 51 to 53 of the Internal Revenue Code of 1954 which is claimed as a credit against the taxpayer's federal tax liability, but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(14) In the case of work incentive program expenses paid or incurred on or after January 1, 1979, the amount of any credit for expenses of work incentive programs under sections 40, 50A and 50B of the Internal Revenue Code of 1954 which is claimed as a credit against the taxpayer's federal tax liability, but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(15) Unemployment compensation to the extent includible in gross income for federal income tax purposes under section 85 of the Internal Revenue Code of 1954;

(16) To the extent included in federal adjusted gross income, severance pay that may be treated as a lump sum distribution under the provisions of section 290.032, subdivision 5;

(17) The amount of any income or gain which is not assignable to Minnesota under the provisions of section 290.17; and

(18) Minnesota exempt-interest dividends as provided by subdivision 27.

(c) Modifications affecting shareholders of electing small business corporations under section 1372 of the Internal Revenue Code of 1954, or section 290.972 of this chapter.

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

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

(3) In cases where the election under section 1372 of the Internal Revenue Code of 1954 antedates the election under section 290.972 of this chapter and at the close of the taxable year immediately preceding the effective election under section 290.972 the corporation has a reserve of undistributed taxable income previously taxed to shareholders under the provisions of the Internal Revenue Code of 1954, in the event and to the extent that the reserve is distributed to shareholders the distribution shall be taxed as a dividend for purposes of this act.

Items of gross income includible within these definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by section 290.07, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that the amounts were accumulated through deductions from gross income or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, but only to the extent that the amounts resulted in a reduction of the tax imposed by this act, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received, but only to the extent that such amounts resulted in a reduction of the tax imposed by this act.

(d) Modification in computing taxable income of the estate of a decedent. Amounts allowable under section 291.07, subdivision 1, clause (2) in computing Minnesota inheritance or estate tax liability shall not be allowed as a deduction in computing the taxable income of the estate unless there is filed within the time and in the manner and form prescribed by the commissioner a statement that the amounts have not been allowed as a deduction under section 291.07 and a waiver of the right to have the amounts allowed at any time as deductions under section 291.07. The provisions of this paragraph shall not apply with respect to deductions allowed under section 290.077 (relating to income in respect of decedents). In the event that the election made for federal tax purposes under section 642(g) of the Internal Revenue Code of 1954 differs from the election made under this paragraph appropriate modification of the estate's

federal taxable income shall be made to implement the election made under this paragraph in accordance with regulations prescribed by the commissioner.

Subd. 21. **Dividends.** (1) The term "dividends" means any distribution made by a corporation to its shareholders, whether in money or in other property, (a) out of its earnings or profits accumulated after December 31, 1932, or (b) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. Dividends paid in property other than cash shall be included in the recipient's income at the fair market value of such property on the date the action ordering their distribution was taken, or if no such action was taken, on the date of the actual payment or credit thereof to the shareholder.

(2) For the purposes of this section every distribution is presumed to be made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of tangible property with situs in Minnesota, accrued, before January 1, 1933, may be distributed exempt from tax, after the earnings and profits accumulated after December 31, 1932, have been distributed, but any such tax-free distribution shall be applied against and reduce the cost or other income tax basis of the stock with respect to which such distribution is made. If such or any similar tax-free distributions exceed such cost or other income tax basis, any excess shall be treated in the same manner as a gain from the sale or exchange of property for the taxable year in which received by the distributee.

(3) A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution of the United States. Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (a) in its stock or in rights to acquire its stock or (b) in money or any other property (including its stock or rights to acquire its stock) then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid. If a corporation cancels or redeems its stock, whether or not such stock was issued as a stock dividend, at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in cancellation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits.

(4) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under section 290.12, but shall be recognized only to the extent provided in section 290.13, and shall be taken into account in computing gross income and net income only to the extent provided in section 290.16. No amounts received in liquidation shall be taxed as a gain until the distributee shall have received in liquidation an amount in excess of the applicable loss or gain basis of the stock in respect of which the distribution is received, and any such excess shall be taxed as gain in the year in which received. No amount received in liquidation shall be treated as the distribution of an ordinary dividend.

(5) Amounts distributed by a regulated investment company, as that term is defined and limited by section 851 of the Internal Revenue Code of 1954, as amended through December 31, 1979, which are designated as capital gain dividends, as that term is defined in section 852(b) (3) (C) of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall be treated by the

shareholders of such a company as gains from the sale or exchange of capital assets held for more than six months and shall be taken into account in computing net income only to the extent provided in section 290.16.

Subd. 22. **Taxable net income.** The term "taxable net income" means the net income assignable to this state pursuant to sections 290.17 to 290.20.

Subd. 23. **Adjusted gross income.** The term "adjusted gross income" means the gross income, as defined in subdivision 20, less the allowable deductions provided in sections 290.09, 290.075, 290.077, and 290.16, subdivision 6, to the extent allowed by section 290.18.

Subd. 24. **Certain unit investment trusts.** (a) A unit investment trust (as defined in the Investment Company Act of 1940)

(1) which is registered under such act and issues periodic payment plan certificates, as defined in such act, in one or more series,

(2) substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company, as defined in such act and securities acquired pursuant to clause (a) (3), or (ii) securities issued by a single other corporation, and

(3) which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such act or the rules and regulations of the securities and exchange commission,

shall not be treated as a person, corporation, partnership, trust or investment company.

(b) In the case of a unit investment trust described in clause (a)

(1) each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust,

(2) the basis of the assets of such trust which are treated under clause (b) (1) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust, and

(3) in determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under clause (b) (1) as being owned by him, there shall be included the period for which such holder has held his interest in such trust.

This subdivision shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a state.

Subd. 25. **Employee stock ownership trust.** The term "employee stock ownership trust" means a trust which (a) is a qualified stock bonus trust under section 401 of the Internal Revenue Code of 1954, as amended through December 31, 1979, except as any of the following requirements may be held to be prohibited transactions under section 503 of the Internal Revenue Code of 1954 amended through December 31, 1979; (b) provides that all employees of an employer with two or more years of fulltime employment shall be eligible as beneficiaries of the trust; (c) provides that shares in the unencumbered trust assets shall be allocated among the beneficiaries' accounts without reduction by social security benefits, in part in proportion to each beneficiary's aggregate compensation during his active employment as of each December 31 and in part upon other factors which will tend to avoid discrimination in favor of highly paid employees; (d) prohibits the receipt or ownership by the trust of securities issued by the employer which are not common stock with voting and dividend rights equal to other outstanding common stock of the employer or which are not convertible into such common stock; and (e) provides that the employees eligible as beneficiaries of the trust shall have the right to elect by majority vote thereof an advisory committee to the trustee or trustees.

Subd. 26. **Internal Revenue Code of 1954.** For purposes of this chapter, for taxable years commencing after December 31, 1973, the provisions of Sections 401(d)(5), 401(d)(8), and 401(e) of the Internal Revenue Code of 1954 as amended through December 31, 1973 shall not be applicable.

Subd. 27. **Minnesota exempt-interest dividends.** If, at the close of each quarter of its taxable year, at least 50 percent of the value (as defined in section 851(c)(4) of the Internal Revenue Code of 1954 as amended through December 31, 1979) of the total assets of a regulated investment company (as defined and limited by section 851 of the Internal Revenue Code of 1954 as amended through December 31, 1979 and to which sections 851 to 855 of the Code apply for the taxable year) consists of obligations described in subdivision 20, clause (b)(1), or section 290.08, subdivision 8, determined without regard to section 290.08, subdivision 13, the company shall be qualified to pay Minnesota exempt-interest dividends, as defined herein, to its shareholders.

(A) A Minnesota exempt-interest dividend means any dividend or part thereof (other than a capital gain dividend as defined in subdivision 21, clause (5) or an exempt-interest dividend as defined in section 852(b)(5)(A) of the Internal Revenue Code of 1954, as amended through December 31, 1979) paid by a regulated investment company and designated by it as a Minnesota exempt-interest dividend in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company, including Minnesota exempt-interest dividends paid after the close of the taxable year as described in section 290.21, subdivision 6, is greater than the excess of—

(i) The amount of interest that would be excludable from gross income under section 290.08, subdivision 8 determined without regard to section 290.08, subdivision 13, if the company were subject to chapter 290, whether or not the company is subject to chapter 290, over

(ii) The amounts that would be disallowed as deductions under section 290.09, subdivisions 3(b) and 13, if the company were subject to chapter 290, whether or not the company is subject to chapter 290, as a result of the company's ownership of obligations described in section 290.08, subdivision 8, determined without regard to section 290.08, subdivision 13,

the portion of such distribution which shall constitute a Minnesota exempt-interest dividend shall be only that proportion of the amount so designated as the amount of the excess for the taxable year bears to the amount so designated.

(B) A Minnesota exempt-interest dividend shall be treated by the shareholders for all purposes of chapter 290 as an item of interest excludable from gross income under subdivision 20, clause (b)(1), and section 290.08, subdivision 8, subject to section 290.08, subdivision 13. Such purposes include but are not limited to—

(i) The determination of gross income and taxable income,

(ii) The determination of distributable net income under section 290.23,

(iii) The allowance of, or calculation of the amount of, any credit or deduction, and

(iv) The determination of the basis in the hands of any shareholder of any share of stock of the company.

History: *1933 c 405 s 1,10,11,21,22; Ex1937 c 49 s 16; 1941 c 550 s 4,11; 1943 c 656 s 1,11; 1945 c 604 s 1,2,19; 1947 c 635 s 1; 1949 c 541 s 1; 1949 c 734 s 1-3; 1953 c 648 s 1; 1955 c 21 s 1; 1955 c 122 s 1; 1955 c 385 s 1; 1957 c 621 s 9; 1957 c 769 s 1; Ex1959 c 83 s 1; 1961 c 213 art 4 s 1; Ex1961 c 51 s 1; 1963 c 355 s 1; 1967 c 579 s 1; 1969 c 575 s 1; 1971 c 206 s 1; 1971 c 769 s 1,2; 1971 c 771 s 1; 1973 c 232 s 1; 1973 c 582 s 3; 1973 c 711 s 1,3; 1973 c 737 s 1; 1974 c*

157 s 2; 1974 c 201 s 1; 1975 c 47 s 1; 1975 c 226 s 2; 1975 c 349 s 1-6,29; 1976 c 2 s 101; 1976 c 210 s 12; 1977 c 298 s 1; 1977 c 376 s 1,13; 1977 c 423 art 1 s 1; 1977 c 429 s 63; 1978 c 674 s 30; 1978 c 721 art 6 s 1; 1978 c 763 s 2; 1978 c 767 s 14,15; 1979 c 50 s 38; 1979 c 303 art 1 s 1; 1980 c 419 s 1; 1980 c 439 s 1; 1980 c 512 s 8; 1980 c 607 art 1 s 1,2,32 (2394-1, 2394-10, 2394-21, 2394-22)

NOTE: The modification provided by section 290.01, subdivision 20, clause (b)(10) is effective for interest received during taxable years beginning after December 31, 1977 on loans executed before January 1, 1982. See Laws 1980, Chapter 607, Article 1, Section 34.

290.011 PUBLIC POLICY.

It is declared to be the public policy of the state of Minnesota that taxation of the income of individuals who do not earn enough to support themselves or their dependents adequately is unfair. To remedy this, a tax credit shall be granted to these individuals sufficient to offset their income tax liability.

History: *1974 c 556 s 1*

290.012 DEFINITIONS.

Subdivision 1. For the purposes of this section and section 290.06, subdivision 3d, the terms defined in this section have the meanings given them unless the context clearly requires otherwise.

Subd. 2. "Claimant" means the individual taxpayer whose income, together with that of his spouse, if any, brings him within the provisions of this section and section 290.06, subdivision 3d. No claimant and spouse whose federal adjusted gross income, including the modifications increasing federal adjusted gross income as computed under section 290.01, subdivision 20, clause (a) and section 290.17, exceed $20,000 may qualify under this section.

Subd. 3. "Dependent" means an individual dependent upon and receiving his chief support from the claimant. Payments for support of minor children under a temporary or final decree of dissolution or legal separation, shall be considered as payments by the claimant for the support of a dependent. For the purposes of section 290.06, subdivision 3d, a spouse except a divorced or separated spouse shall be considered to be a dependent.

Subd. 4. "Income" means income of the claimant and spouse as defined in section 290A.03, subdivision 3.

History: *1974 c 556 s 2; 1975 c 437 art 9 s 1; 1976 c 334 s 12; 1977 c 423 art 1 s 2; 1978 c 767 s 16; 1979 c 303 art 1 s 2*

290.013 ITEMS NOT TO BE TAKEN INTO ACCOUNT REPEATEDLY.

Except as distinctly expressed or manifestly intended, the same item, whether of income, deduction, credit, or otherwise, shall not be taken into account in a taxable year if previously taken into account in a prior taxable year where the reason for the subsequent consideration is solely based on updating a reference to the Internal Revenue Code to take account of an amendment in a later year.

History: *1977 c 376 s 3*

290.02 EXCISE TAX ON CORPORATIONS; IMPOSITION, MEASUREMENT.

An annual excise tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation doing business within this state, except those included within section 290.03, including but not limited to railroad companies for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter.

History: *1933 c 405 s 2; Ex1937 c 49 s 2; 1947 c 635 s 2; 1974 c 556 s 18; 1975 c 349 s 7; 1976 c 2 s 102 (2394-2)*

290.03 INCOME TAX; IMPOSITION, CLASSES OF TAXPAYERS.

An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;

Business within the state shall not be deemed to include transportation in interstate or foreign commerce, or both, by means of ships navigating within or through waters which are made international for navigation purposes by any treaty or agreement to which the United States is a party;

(2) Resident and non-resident individuals;

(3) Estates of decedents, dying domiciled within or without this state;

(4) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations.

History: *1933 c 405 s 3; Ex1937 c 49 s 3; 1941 c 550 s 1; 1945 c 410 s 1; Ex1957 c 1 art 3; 1963 c 587 s 1; 1967 c 577 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 419 s 2 (2394-3)*

290.031 [Repealed, 1978 c 721 art 5 s 1]

290.032 LUMP SUM DISTRIBUTION TAX.

Subdivision 1. There is hereby imposed as an addition to the annual income tax for a taxable year of a taxpayer in the classes described in section 290.03 a tax with respect to any distribution received by such taxpayer that is treated as a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1979, and that is subject to tax for such taxable year under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1979.

Subd. 2. The amount of tax imposed by subdivision 1 shall be computed in the same way as the tax imposed under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1979, except that the initial separate tax shall be an amount equal to ten times the tax which would be imposed by section 290.03 if the recipient was an individual referred to in such section and the taxable net income, excluding the credits allowed in section 290.06, subdivision 3c, and section 290.21, was an amount equal to one-tenth of the excess of

(i) the total taxable amount of the lump sum distribution for the year, over

(ii) the minimum distribution allowance, and except that references in section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1979, to paragraph (1)(A) thereof shall instead be references to subdivision 1 of this section.

Subd. 3. The tax imposed by this section shall not be applicable to a non-resident individual.

Subd. 4. The provisions of section 402(e)(4)(L) of the Internal Revenue Code of 1954, as amended through December 31, 1979 (relating to an election

on the taxation of lump-sum distributions), may be elected by the taxpayer for the purpose of computing the tax imposed by subdivision 1.

Subd. 5. An amount distributed to an individual as severance pay upon discontinuation of the individual's employment due to termination of business operations by the individual's employer may be treated as a lump sum distribution according to the provisions of this section. For the payment to be treated as a lump sum distribution under this subdivision, the termination of the employer's business operation at that site must be reasonably likely to be permanent and to involve the discharge within a period of one year of at least 75 percent of the persons employed by that employer at that site. For the purposes of this subdivision, "severance pay" shall mean an amount received for the cancellation of an employment contract or a collectively bargained termination payment in the nature of a substitute for income which would have been earned for personal services to be rendered in the future.

The minimum distribution allowance provided in sections 402 (e)(1)(C) and (D) of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall not apply to the computation allowed under this subdivision.

History: *1975 c 349 s 28; 1977 c 376 s 2,13; 1979 c 303 art 1 s 3,4; 1980 c 607 art 1 s 32*

290.04 LIABILITY FOR TAX.

Subdivision 1. **Accrual.** The liability for the tax imposed by section 290.02 shall arise upon the first day of the taxable year upon which a domestic corporation exercises any of the privileges specified in section 290.02 or exists as a corporation, or on which a foreign corporation is possessed of the privilege for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form. The liability for the tax imposed by section 290.03 shall arise concurrently with the receipt or accrual of income during the taxable year. The provisions shall in no way affect the determination of the amount of such taxes, the time for making returns, and the time for paying such taxes.

Subd. 2. **Fiduciary relationship not to affect.** The liability of any taxpayer shall remain unaffected by the fact that such taxpayer, or the title, possession, custody, or control of his business or property, is in the care of a guardian, trustee, receiver, conservator, or any other person acting in any fiduciary capacity for such taxpayer or in reference to his business or property, unless the taxes imposed by this chapter are specifically imposed by this chapter upon any such guardian, trustee, receiver, conservator, or fiduciary.

History: *1933 c 405 s 4; Ex1937 c 49 s 4 (2394-4)*

290.05 EXEMPT INDIVIDUALS, ORGANIZATIONS, ESTATES, TRUSTS.

Subdivision 1. The following corporations, individuals, estates, trusts, and organizations shall be exempted from taxation under this chapter, provided that every such person or corporation claiming exemption under this chapter, in whole or in part, must establish to the satisfaction of the commissioner the taxable status of any income or activity:

(a) National and state banks, except as such banks are subject to the excise tax imposed by sections 290.085 and 290.361;

(b) Corporations, individuals, estates, and trusts engaged in the business of mining or producing iron ore and other ores the mining or production of which is subject to the occupation tax imposed by sections 298.01 and 298.011; but if any such corporation, individual, estate, or trust engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other

business or activity. Royalty (as defined in section 299.02) shall not be considered as income from the business of mining or producing iron ore within the meaning of this section;

(c) Farmers' mutual insurance companies organized and existing under the laws of the state and credit unions organized under chapter 52;

(d) Fraternal beneficiary associations wherever organized, and public department relief associations of public employees of this state or of any of its political subdivisions;

(e) Cooperative or mutual rural telephone associations; and cooperative associations organized under the provisions of Laws 1923, Chapter 326, as amended, which are engaged in the transmission and distribution of electrical heat, light or power upon a mutual and cooperative plan in areas outside the corporate limits of any city; but if any such cooperative association engages in supplying electrical heat, light or power to consumers within the corporate limits of any city, then such association shall be subject to this tax computed on that portion of its net income which its gross receipts from consumers within such corporate limits bears to its total gross receipts;

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

(g) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of processing or marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who process or market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose; such an association may market the products of non-members in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases; business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this clause;

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

(i) Any corporation, fund, foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes, or for the purpose of making contributions to or for the use of the United

States of America, the state of Minnesota or any of its political subdivisions for exclusively public purposes, or for any combination of the above enumerated purposes, if no part of the net income of any such corporation, fund, foundation, trust or association inures to the benefit of any private member, stockholder, or individual;

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

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

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

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

(n) Corporations organized by an association exempt under the provisions of clause (g), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association; exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose;

(o) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

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

Subd. 2. (a) Corporations, individuals, estates, trusts or organizations claiming exemption under the provisions of subdivision 1, clauses (d), (f), (g), (i), (j), (k), (n), (o) or (p) shall furnish information as to their exempt status under the Internal Revenue Code of 1954, as amended through December 31, 1979.

(b) Such corporations, individuals, estates, trusts, and organizations shall file with the commissioner of revenue a copy of any annual report that is required to be filed with the Internal Revenue Service, no later than 10 days after filing the same with the Internal Revenue Service.

Any person required to file a copy of a federal return pursuant to the preceding paragraph who willfully fails to file such return shall be guilty of a misdemeanor.

(c) In the event that the Internal Revenue Service revokes, cancels or suspends the exempt status of any corporation, individual, estate, trust or organization referred to in clause (a) of this subdivision, such corporation, individual,

estate, trust or organization shall notify the commissioner in writing of such action within 90 days after receipt of notice from the Internal Revenue Service.

History: *1933 c 405 s 5; Ex1937 c 49 s 5; 1939 c 446 s 1,2; 1941 c 109 s 1; 1941 c 550 s 2; 1943 c 643 s 1; 1943 c 656 s 27; 1947 c 635 s 3; 1953 c 647 s 1; 1965 c 596 s 1; 1967 c 671 s 1; 1971 c 769 s 2; 1971 c 802 s 1; 1973 c 123 art 2 s 1 subd 2; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32 (2394-5)*

290.06 RATES OF TAX; CREDITS AGAINST TAX.

Subdivision 1. **Computation, corporations.** The privilege and income taxes imposed by this chapter upon corporations shall be computed by applying to their taxable net income in excess of the applicable credits allowed under section 290.21 the rate of 12 percent.

Subd. 2. [Repealed, Ex1971 c 31 art 18 s 6]

Subd. 2a. [Repealed, Ex1967 c 32 art 14 s 12]

Subd. 2b. [Repealed, 1980 c 419 s 46]

Subd. 2c. **Schedule of rates for individuals, estates and trusts.** (a) For taxable years beginning after December 31, 1979, the income taxes imposed by this chapter upon individuals, estates and trusts, other than those taxable as corporations, shall be computed by applying to their taxable net income in excess of the applicable credits allowed by section 290.21, the following schedule of rates:

(1) On the first $500, one and six-tenths percent;

(2) On the second $500, two and two-tenths percent;

(3) On the next $1,000, three and five-tenths percent;

(4) On the next $1,000, five and eight-tenths percent;

(5) On the next $1,000, seven and three-tenths percent;

(6) On the next $1,000, eight and eight-tenths percent;

(7) On the next $2,000, ten and two-tenths percent;

(8) On the next $2,000, eleven and five-tenths percent;

(9) On the next $3,500, twelve and eight-tenths percent;

(10) On all over $12,500, and not over $20,000, fourteen percent;

(11) On all over $20,000 and not over $27,500, fifteen percent;

(12) On all over $27,500, sixteen percent.

(b) In lieu of a tax computed according to the rates set forth in clause (a) of this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year, reduced by the applicable credits allowed by section 290.21, is less than $20,000 shall be computed in accordance with tables prepared and issued by the commissioner of revenue based on income brackets of not more than $100. The amount of tax for each bracket shall be computed at the rates set forth in this subdivision, provided that the commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case it may be increased to $1.

Subd. 2d. **Inflation adjustment of brackets.** For taxable years beginning after December 31, 1978, the taxable net income brackets in subdivision 2c shall be adjusted for inflation. The commissioner of revenue shall determine the percentage increase for each year in the revised consumer price index for all urban consumers for the Minneapolis-St. Paul metropolitan area prepared by the United States department of labor with 1967 as a base year. The commissioner shall determine the percentage increase from August, 1978 to, in 1979, August, 1979 and in each subsequent year, from August of the preceding year to August of the current year, and shall announce the percentage figure by October 1 each year. The dollar amounts in each taxable net income bracket for the prior year

in subdivision 2c shall be multiplied by a figure equal to 85 percent of that percentage. The product of the calculation shall be added to each inflation adjusted taxable net income bracket for the prior year to produce the inflation adjusted taxable net income brackets for each succeeding year. If the product exceeds a whole dollar amount, it shall be raised to the next highest whole dollar.

Subd. 3. [Repealed, Ex1967 c 32 art 14 s 12]

Subd. 3a. [Repealed, 1980 c 419 s 46]

Subd. 3b. [Repealed, 1980 c 419 s 46]

Subd. 3c. **Credits against tax.** Notwithstanding the provisions of subdivision 3a for taxable years which begin after December 31, 1978 and before January 1, 1980, the taxes due under the computation in accordance with section 290.06 shall be credited with the following amounts:

(1) In the case of an unmarried individual and in the case of the estate of a decedent, $55, and in the case of a trust, $5;

(2) In the case of a married individual, living with a spouse, $110. If the spouses file separate, combined or joint returns the personal credits may be taken by either or divided between them;

(3) In the case of an individual, $55 for each person (other than a spouse) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent. A payment to a divorced or separated spouse, other than a payment for support of minor children under a temporary order or final decree of dissolution or legal separation, shall not be considered a payment by the other spouse for the support of any dependent.

(4) (a) In the case of an unmarried individual who has attained the age of 65 before the close of his taxable year, an additional $55;

(b) In the case of an unmarried individual who is blind at the close of the taxable year, an additional $55;

(c) In the case of a married individual, living with a spouse, an additional $55 for each spouse who has attained the age of 65 before the close of the individual's taxable year, and an additional $55 for each spouse who is blind at the close of the individual's taxable year. If such husband and wife make separate, combined or joint returns, these credits may be taken by either or divided between them;

(d) In the case of an individual, another $55 for each person, other than a spouse, who is blind and dependent upon and receiving his chief support from the taxpayer;

(e) For the purposes of subparagraphs (b), (c) and (d) of paragraph (4), an individual is blind if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(f) In the case of an unmarried individual who is deaf at the close of the taxable year, an additional $55.

(g) In the case of a married individual, an additional $55 for each spouse who is deaf at the close of the taxable year. If the spouses file separate, combined or joint returns, these credits may be taken by either or divided between them.

(h) In the case of an individual, an additional $55 for each person (other than a spouse) who is deaf and dependent upon and receiving his chief support from the taxpayer.

(i) For the purposes of subparagraphs (f), (g) and (h) of paragraph (4), an individual is deaf if the average loss in the speech frequencies (500-2000 Hertz) in the better ear, unaided, is 92 decibels, American National Standards Institute, or worse.

(5) (a) In the case of an unmarried individual who is a quadriplegic at the close of the taxable year, an additional $55;

(b) In the case of a married individual, living with a spouse, an additional $55 for each spouse who is a quadriplegic at the close of the taxable year. If the spouses file separate, combined or joint returns, these credits may be taken by either or divided between them;

(c) In the case of an individual, another $55 for each person, other than a spouse, who is quadriplegic and dependent upon and receiving his chief support from the taxpayer and

(d) For the purposes of subparagraphs (a), (b) and (c) of paragraph (5), "quadriplegic" means an individual who has a congenital or traumatic partial or total loss of all four limbs or who has a disability that substantially impairs the functioning of all four limbs.

(6) In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under Extra Session Laws 1967, Chapter 32, is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by Extra Session Laws 1933, Chapter 53, as amended;

(7) In the case of a nonresident individual, credits under paragraphs 1, 2, 3, 4 and 5 shall be apportioned in the proportion of the gross income from sources in Minnesota to the gross income from all sources, and in any event a minimum credit of $5 shall be allowed.

Subd. 3d. **Low income alternative tax.** A claimant as defined in 290.012 may pay a tax computed under this subdivision in lieu of the tax computed under sections 290.06, subdivisions 2c, 3e, 3f, 9, 9a, 11, 14 and 290.081 without the provisions of section 290.012 and this subdivision:

(1) For taxable years beginning after December 31, 1979, the alternative tax shall be zero for the following claimants:

(a) An unmarried claimant with an income of $5,800 or less;

(b) A claimant with one dependent, with an income of $7,400 or less;

(c) A claimant with two dependents, with an income of $8,800 or less;

(d) A claimant with three dependents, with an income of $10,000 or less;

(e) A claimant with four dependents, with an income of $10,500 or less; and

(f) A claimant with five or more dependents, with an income of $11,000 or less.

(2) In the case of a claimant with an income in excess of that set forth in the appropriate category of clause (1), he may pay a tax equal to 15 percent of that portion of his income that is in excess of the amount set forth in the appropriate category of clause (1), or his tax obligation as it would have been in the absence of section 290.012 and this subdivision, whichever is less.

(3) The total income of the claimant and his spouse, if any, shall be the figure employed for the purposes of this subdivision. No individual dependent upon and receiving his chief support from any other individual may be a claimant under section 290.012 and this subdivision. The commissioner of revenue shall prescribe the additional forms or alterations in existing forms as necessary to comply with the provisions of section 290.012 and this subdivision. All claimants shall submit their returns on these forms.

The commissioner of revenue shall provide alternative tax tables which will include these credits.

Subd. 3e. **Homemaker credit.** A credit of $50 may be deducted from the tax due from the taxpayer and his spouse, if any, under this chapter if either the taxpayer or his spouse devotes his time to caring for his children and their home and is not employed outside of the home. A taxpayer would qualify for the credit if

(a) he has a child who is twelve years of age or younger residing in his home at any time during the taxable year;

(b) either the taxpayer or his spouse remains unemployed throughout the taxable year for the purpose of caring for the child in the home; and

(c) the combined federal adjusted gross income of the taxpayer and his spouse is not in excess of $25,000.

A married claimant shall file his income tax return for the year for which he claims the credit either jointly or separately on one form with his spouse. In the case of the married claimant, only one spouse may claim the credit.

Subd. 3f. **Credits against tax.** Notwithstanding the provisions of subdivision 3a, and subject to the provisions of subdivision 3g for taxable years which begin after December 31, 1979, the taxes due under the computation in accordance with this section shall be credited with the following amounts:

(1) In the case of an unmarried individual and in the case of the estate of a decedent, $60, and in the case of a trust, $5;

(2) In the case of a married individual, living with a spouse, $120. If the spouses file separate, combined or joint returns the personal credits may be taken by either or divided between them;

(3) In the case of an individual, $60 for each person (other than a spouse) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent. A payment to a divorced or separated spouse, other than a payment for support of minor children under a temporary order or final decree of dissolution or legal separation, shall not be considered a payment by the other spouse for the support of any dependent.

(4) (a) In the case of an unmarried individual who has attained the age of 65 before the close of his taxable year, an additional $60;

(b) In the case of an unmarried individual who is blind at the close of the taxable year, an additional $60;

(c) In the case of a married individual, living with a spouse, an additional $60 for each spouse who has attained the age of 65 before the close of the individual's taxable year, and an additional $60 for each spouse who is blind at the close of the individual's taxable year. If the spouses file separate, combined or joint returns, these credits may be taken by either or divided between them;

(d) In the case of an individual, another $60 for each person, other than a spouse, who is blind and dependent upon and receiving his chief support from the taxpayer;

(e) For the purposes of subparagraphs (b), (c) and (d) of paragraph (4), an individual is blind if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(f) In the case of an unmarried individual who is deaf at the close of the taxable year, an additional $60.

(g) In the case of a married individual, an additional $60 for each spouse who is deaf at the close of the taxable year. If the spouses file separate, combined or joint returns, these credits may be taken by either or divided between them.

(h) In the case of an individual, an additional $60 for each person (other than a spouse) who is deaf and dependent upon and receiving his chief support from the taxpayer.

(i) For the purposes of subparagraphs (f), (g) and (h) of paragraph (4), an individual is deaf if the average loss in the speech frequencies (500-2000 Hertz) in the better ear, unaided, is 92 decibels, American National Standards Institute, or worse.

(5) (a) In the case of an unmarried individual who is a quadriplegic at the close of the taxable year, an additional $60;

(b) In the case of a married individual, living with a spouse, an additional $60 for each spouse who is a quadriplegic at the close of the taxable year. If the spouses file separate, combined or joint returns, these credits may be taken by either or divided between them;

(c) In the case of an individual, another $60 for each person, other than a spouse, who is quadriplegic and dependent upon and receiving his chief support from the taxpayer; and

(d) For the purposes of subparagraphs (a), (b) and (c) of paragraph 5, "quadriplegic" means an individual who has a congenital or traumatic partial or total loss of all four limbs or who has a disability that substantially impairs the functioning of all four limbs.

(6) In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under Extra Session Laws 1967, Chapter 32, is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by Extra Session Laws 1933, Chapter 53, as amended.

(7) In the case of a nonresident individual, credits under paragraphs 1, 2, 3, 4 and 5 shall be apportioned in the proportion of the gross income from sources in Minnesota to the gross income from all sources, and in any event a minimum credit of $5 shall be allowed.

Subd. 3g. **Inflation adjustment of credits.** For taxable years beginning after December 31, 1980, the credits provided for individuals in subdivision 3f shall be adjusted for inflation. The commissioner of revenue shall determine the percentage increase for each year in the revised consumer price index for all urban consumers for the Minneapolis-St. Paul metropolitan area prepared by the United States department of labor with 1967 as a base year. The commissioner shall determine the percentage increase from August, 1980 to, in 1981, August, 1981 and in each subsequent year, from August of the preceding year to August of the current year, and shall announce the percentage figure by October 1 each year. The dollar amount of each inflation adjusted credit for the prior year in subdivision 3f shall be multiplied by a figure equal to that percentage. The product of the calculation shall be added to the inflation adjusted credit for the prior year to produce the inflation adjusted individual credits for each succeeding year. If the product exceeds a whole dollar amount, it shall be rounded to the nearest whole dollar.

Subd. 4. [Repealed, Ex1971 c 31 art 6 s 2]

Subd. 5. [Expired]

Subd. 6. [Repealed, Ex1971 c 31 art 6 s 2]

Subd. 7. [Expired]

Subd. 8. [Repealed, Ex1967 c 32 art 2 s 1]

Subd. 9. **Pollution control equipment, credit.** (a) A credit of five percent of the net cost of equipment used primarily to abate or control pollutants to meet or exceed state laws, rules or standards to the extent the property is so used and which is included in section 290.09, subdivision 7, paragraph (A) (a) may be deducted from the tax due under this chapter in the first year for which a depreciation deduction is allowed for the equipment. The credit allowed by this subdivision shall not exceed so much of the liability for tax for the taxable year as does not exceed $75,000. The credit shall apply only if the equipment meets rules prescribed by the Minnesota pollution control agency and is installed or operated in accordance with a permit or order issued by the agency.

(b) If the amount of the credit determined under (a) for any taxable year for which a depreciation deduction is allowed exceeds the limitation provided by (a) for such taxable year (hereinafter in this subdivision referred to as the "unused credit year"), such excess shall be, a credit carryover to each of the four taxable years following the unused credit year.

The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the four taxable years to which such credit may be carried and then to each of the other three taxable years; provided, however, the maximum credit allowable in any one taxable year under this subdivision (including the credit allowable under (a) and the carryforward allowable under this paragraph) shall in no event exceed $75,000.

(c) This subdivision shall apply to property acquired in taxable years beginning on or after January 1, 1977.

Subd. 9a. **Feedlot pollution control equipment.** A credit of ten percent of the net cost of pollution control and abatement equipment, including but not limited to, lagoons, concrete storage pits, slurry handling equipment, and other equipment and devices approved by the pollution control agency, purchased, installed and operated within the state by a feedlot operator to prevent pollution of air, land, or water in connection with the operation of a livestock feedlot, poultry lot or other animal lot, may be deducted from the tax due under this chapter in the taxable year in which such equipment is purchased; provided that no deduction shall be taken for any portion of the cost of the same equipment pursuant to subdivision 9.

If the amount of the credit provided by this subdivision exceeds the taxpayer's liability for taxes pursuant to chapter 290 in the taxable year, beginning after December 31, 1972, in which the equipment is purchased, the excess amount may be carried forward to the four taxable years following the year of purchase. The entire amount of the credit not used in the year purchased shall be carried to the earliest of the four taxable years to which the credit may be carried and then to each of the three successive taxable years.

Subd. 10. **Computation of tax.** In computing the dollar amount of items on the income tax return and accompanying schedules, such money items may be rounded off to the nearest whole dollar amount, disregarding amounts less than 50 cents and increasing amounts of 50 cents to 99 cents to the next highest dollar.

Subd. 11. **Contributions to political parties and candidates.** In lieu of the credit against taxable net income provided by section 290.21, subdivision 3, clause (e), a taxpayer may take a credit against the tax due under this chapter of 50 percent of his contributions to candidates for elective state or federal public office and to any political party. The maximum credit for an individual shall not exceed $50 and, for a married couple filing jointly, shall not exceed $100. No credit shall be allowed under this subdivision for a contribution to any candidate, other than a candidate for elective judicial office or federal office, who has

not signed an agreement to limit his campaign expenditures as provided in section 10A.32, subdivision 3b. For purposes of this subdivision, a political party means a major political party as defined by section 10A.01, subdivision 12.

This credit shall be allowed only if the contribution is verified in the manner the commissioner of revenue shall prescribe.

Subd. 12. [Repealed, 1979 c 303 art 1 s 23]

Subd. 13. **Gasoline and special fuel tax refund.** Subject to the provisions of section 296.18, a credit equal to the amount paid by the taxpayer during the taxable year as excise tax on gasoline bought and used for any purpose other than use in motor vehicles or snowmobiles or on special fuel bought and used for any purpose other than use in licensed motor vehicles may be deducted from any tax due under this chapter. Any amount by which the credit exceeds the tax due shall be refunded.

Subd. 14. **Residential energy credit.** A credit of 20 percent of the first $10,000 of renewable energy source expenditures, including the expenditures described in clauses (a), (b) and (d) if made by an individual taxpayer on a Minnesota building of six dwelling units or less and expenditures for biomass conversion equipment described in clause (c), may be deducted from the tax due under this chapter for the taxable year in which the expenditures were made. For purposes of this subdivision, the term "building" shall include a condominium or townhouse used by the taxpayer as a residence. In the case of qualifying expenditures incurred in connection with a building under construction by a contractor, the credit shall be deducted from the tax liability of the first individual to purchase the building for use as a principal residence or for residential rental purposes; the contractor shall not be eligible for the credit given pursuant to this subdivision for that expenditure.

A "renewable energy source expenditure" which qualifies shall include:

(a) Expenditures which qualify for the federal renewable energy source credit, pursuant to Section 44C of the Internal Revenue Code of 1954, as amended through December 31, 1979, and any regulations promulgated pursuant thereto, provided that, after December 31, 1980, any solar collector included in the claimed expenditure is certified by the energy agency. A solar collector is a device designed to absorb incident solar radiation, convert it to thermal energy, and transfer the thermal energy to a fluid passing through or in contact with the device. "Solar collector" shall not include passive solar energy systems as defined in clause (d);

(b) Expenditures for earth sheltered dwelling units. For purposes of this credit, an "earth sheltered dwelling unit" shall mean a structure which complies with applicable building standards and which is constructed so that:

(1) 80 percent or more of the roof area is covered with a minimum depth of 12 inches of earth; and

(2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and

(3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;

(c) Expenditures for biomass conversion equipment located in Minnesota which produces ethanol, methane or methanol for use as a gaseous or as a liquid fuel which is not offered for sale; and

(d) Expenditures for passive solar energy systems. For purposes of this credit, a "passive solar energy system" is defined to include systems which utilize elements of the building and its operable components to heat or cool a building with the sun's energy by means of conduction, convection, radiation, or evaporation. A passive system shall include:

(1) Collection aperture, including glazing installed in south facing walls and roofs; and

(2) Storage element, including thermal mass in the form of water, masonry, rock, concrete, or other mediums which is designed to store heat collected from solar radiation.

A passive system may include:

(1) Control and distribution element, including fans, louvers, and air ducts; and/or

(2) Retention element, including movable insulation used to minimize heat loss caused by nocturnal radiation through areas used for direct solar heat gain during daylight hours.

Eligible passive expenditures shall be for equipment, materials or devices that are an integral part of the components listed above and essential to the functioning of a passive design which qualifies pursuant to rules promulgated by the commissioner of revenue in cooperation with the director of the energy agency. Expenditures for equipment, materials, or devices which are a part of the normal heating, cooling, or insulation system of a building are not eligible for the credit.

If a credit was allowed to a taxpayer under this subdivision for any prior taxable year, the dollar amount of the maximum expenditure for which a taxpayer may qualify for a credit under this subdivision in subsequent years shall be $10,000 reduced by the amount of expenditures which a credit was claimed pursuant to this subdivision in prior years. A taxpayer shall never be allowed to claim more than $10,000 of expenditures during the duration of the renewable energy credit.

The credit provided in this subdivision shall not be allowed in a taxable year if the amount of the credit would be less than $10.

If the credit allowable under this subdivision exceeds the amount of tax due in a taxable year, the excess credit shall not be refunded but may be carried forward to the succeeding taxable year and added to the credit allowable for that year. No amount may be carried forward to a taxable year beginning after December 31, 1984.

A shareholder in a family farm corporation and each partner in a partnership operating a family farm shall be eligible for the credit provided by this subdivision in the same manner and to the same extent allowed a joint owner of property under section 44C (d) of the Internal Revenue Code of 1954, as amended through December 31, 1979. "Family farm corporation" and "family farm" have the meanings given in section 500.24.

The credit provided in this subdivision is subject to the provisions of Section 44C, (c) (7), (d) (1) to (3), and (e), of the Internal Revenue Code of 1954, as amended through December 31, 1979, and any regulations promulgated pursuant thereto.

The commissioner of revenue in cooperation with the director of the energy agency shall promulgate rules establishing additional qualifications and definitions for the credits provided in this subdivision.

Notwithstanding section 290.61, the commissioner of revenue may request the energy agency to assist in the review and auditing of the information furnished by the taxpayer for purposes of claiming this credit. The provisions of section 290.61 shall apply to employees of the energy agency who receive information furnished by a taxpayer for purposes of claiming this credit.

The director of the energy agency shall promulgate rules establishing the criteria for certification of solar collectors as required by clause (a). The criteria shall:

(1) Specify the testing procedures to be used in the evaluation of solar collectors;

(2) Establish minimum levels of collector quality for safety;

(3) Provide a means to determine the maintainability and structural integrity of solar collectors;

(4) Establish a system for evaluating and rating the thermal performance of solar collectors;

(5) Specify the procedures to follow to obtain certification of a solar collector;

(6) Conform to the maximum extent practicable to the solar collector certification requirements of other states which have adopted certification procedures; and

(7) Allow for individual variation so as not to hamper the development of innovative solar collectors.

The director of the energy agency may promulgate temporary rules pursuant to section 15.0412, subdivision 5 to establish this certification procedure.

This subdivision is effective for expenditures made during taxable years beginning after December 31, 1978 and before January 1, 1983.

History: *1933 c 405 s 6; Ex1937 c 49 s 6; 1939 c 446 s 3; 1941 c 550 s 3; 1943 c 656 s 2; 1945 c 604 s 3; 1947 c 635 s 4; 1949 c 642 s 13; 1949 c 734 s 4,5; 1951 c 605 s 1,2; 1951 c 676 s 1; 1953 c 667 s 1,2; 1955 c 84 s 1; 1957 c 847 s 1; Ex1957 c 1 art 1 s 1; Ex1957 c 1 art 2 s 1; Ex1957 c 1 art 7 s 2; Ex1959 c 70 art 3 s 1-5; Ex1961 c 91 art 1 s 1,2; Ex1961 c 91 art 5 s 1,3,4; Ex1961 c 91 art 6 s 1; 1963 c 835 s 1; 1963 c 886 s 1-4; 1965 c 884 art 1 s 1-4; Ex1967 c 32 art 12 s 1, art 14 s 1-5; 1969 c 399 s 25,26; 1969 c 881 s 2-5; 1969 c 1000 s 1; 1971 c 35 s 1; 1971 c 794 s 1,2; Ex1971 c 2 s 1,2; Ex1971 c 31 art 6 s 1; Ex1971 c 31 art 18 s 1-4; 1973 c 22 s 1; 1973 c 582 s 3; 1973 c 650 art 22 s 1; 1974 c 470 s 35; 1974 c 556 s 3; 1975 c 349 s 8,9; 1975 c 355 s 1; 1975 c 437 art 9 s 2; 1976 c 2 s 103; 1977 c 250 s 1; 1977 c 386 s 2; 1977 c 423 art 1 s 4,5; 1978 c 463 s 106; 1978 c 721 art 2 s 1; art 3 s 1; art 4 s 1; art 7 s 1; art 8 s 1; art 9 s 1; 1979 c 59 s 7; 1979 c 303 art 1 s 5-10; art 4 s 1-3; art 5 s 1-3; art 10 s 6; 1980 c 509 s 113,114; 1980 c 607 art 1 s 3-7,32; art 9 s 1 (2394-6)*

290.0601 [Repealed, 1977 c 423 art 2 s 20]
290.0602 [Repealed, 1977 c 423 art 2 s 20]
290.0603 [Repealed, 1977 c 423 art 2 s 20]
290.0604 [Repealed, 1977 c 423 art 2 s 20]
290.0605 [Repealed, 1977 c 423 art 2 s 20]
290.0606 [Repealed, 1977 c 423 art 2 s 20]
290.0607 [Repealed, 1973 c 650 art 16 s 4]
290.0608 [Repealed, 1977 c 423 art 2 s 20]
290.0609 [Repealed, 1977 c 423 art 2 s 20]
290.061 MS 1953 [Repealed, Ex1957 c 1 art 1 s 2]
290.061 MS 1976 [Repealed, 1977 c 423 art 2 s 20]
290.0611 [Repealed, 1977 c 423 art 2 s 20]
290.0612 [Repealed, 1977 c 423 art 2 s 20]
290.0613 [Repealed, Ex1971 c 31 art 8 s 8]
290.0614 [Repealed, 1977 c 423 art 2 s 20]
290.0615 [Repealed, 1977 c 423 art 2 s 20]
290.0616 [Repealed, 1977 c 423 art 2 s 20]

290.0617 [Repealed, 1973 c 650 art 16 s 4]
290.0618 [Repealed, 1977 c 423 art 2 s 20]
290.062 [Expired]
290.063 [Expired]
290.064 [Expired]
290.065 [Repealed, 1969 c 399 s 51]
290.066 [Repealed, 1977 c 423 art 2 s 20]

290.067 DEPENDENT CARE CREDIT.

Subdivision 1. **Amount of credit.** A taxpayer may take as a credit against the tax due from him and his spouse, if any, under this chapter an amount equal to the dependent care credit for which he is eligible pursuant to the provisions of section 44A of the Internal Revenue Code of 1954, as amended through December 31, 1979, subject to the limitations provided in subdivision 2.

Subd. 2. **Limitations.** The credit for expenses incurred for the care of each dependent shall not exceed $400 in any taxable year, and the total credit for all dependents of a claimant shall not exceed $800 in a taxable year. The total credit shall be reduced by five percent of the amount by which the combined federal adjusted gross income of the claimant and his spouse, if any, exceeds $15,000. A married claimant shall file his income tax return for the year for which he claims the credit either jointly or separately on one form with his spouse. In the case of a married claimant only one spouse may claim the credit. No expense for which a medical expense deduction is claimed pursuant to section 290.09, subdivision 10, shall be claimed as a dependent care expense.

Subd. 3. **Credit to be refundable.** If the amount of credit which a claimant would be eligible to receive pursuant to this subdivision exceeds his tax liability under chapter 290, the excess amount of the credit shall be refunded to the claimant by the commissioner of revenue.

Subd. 4. **Right to file claim.** The right to file a claim under this section shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. When a claimant dies after having filed a timely claim the amount thereof shall be disbursed to another member of the household as determined by the commissioner of revenue. If the claimant was the only member of his household, the claim may be paid to his personal representative, but if neither is appointed and qualified within two years of the filing of the claim, the amount of the claim shall escheat to the state.

Subd. 5. **Appropriation.** A sum sufficient to pay the claims for credit to be given pursuant to subdivisions 1 to 4 shall be appropriated annually to the commissioner of revenue from the general fund in the state treasury.

History: *1977 c 423 art 7 s 1,2; 1979 c 303 art 1 s 11; 1980 c 607 art 1 s 11,12*

290.07 NET INCOME; COMPUTATION, ACCOUNTING PERIOD.

Subdivision 1. **Annual accounting period.** Net income and taxable net income shall be computed upon the basis of the taxpayer's annual accounting period. If a taxpayer has no annual accounting period, or has one other than a fiscal year, as heretofore defined, the net income and taxable net income shall be computed on the basis of the calendar year. Taxpayers shall employ the same accounting period on which they report, or would be required to report, their net income under the federal income tax act.

A taxpayer may change his accounting period only with the consent of the commissioner. In case of any such change, he shall pay a tax for the period not

included in either his former or newly adopted taxable year, computed as provided in section 290.32.

Subd. 2. **Accounting methods.** Except as specifically provided to the contrary by this chapter, net income and taxable net income shall be computed in accordance with the method of accounting regularly employed in keeping the taxpayer's books. If no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this chapter, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly and fairly reflect income and the income taxable under this chapter.

Except as otherwise expressly provided in this chapter, a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his net income and taxable net income under the new method, secure the consent of the commissioner.

Subd. 3. **Change in accounting methods; adjustments.** (1) In computing the taxpayer's net income and taxable net income for any taxable year (referred to in this subdivision as the "year of the change"): (a) if such computation is under a method of accounting different from the method under which the taxpayer's net income and taxable net income for the preceding taxable year was computed, then (b) there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this subdivision does not apply.

(2) If (a) the method of accounting from which the change is made was used by the taxpayer in computing his net income and taxable net income for the two taxable years preceding the year of the change, and (b) the increase in net income and taxable net income for the year of the change which results solely by reason of the adjustments required by paragraph (1) (b) exceeds $3,000, then the tax under this chapter attributable to such increase in net income and taxable net income shall not be greater than the aggregate of the taxes under this chapter (or under the corresponding provisions of this chapter) which would result if one-third of such increase were included in net income and taxable net income for the year of the change and one-third of such increase were included for each of the two preceding taxable years.

(3) If (a) the increase in net income and taxable net income for the year of the change which results solely by reason of the adjustments required by paragraph (1) (b) exceeds $3,000, and (b) the taxpayer establishes his net income and taxable net income (under the new method of accounting) for one or more taxable years consecutively preceding the taxable year of the change for which the taxpayer in computing net income and taxable net income used the method of accounting from which the change is made, then the tax under this chapter attributable to such increase in net income and taxable net income shall not be greater than the net increase in the taxes under this chapter which would result if the adjustments required by paragraph (1) (b) were allocated to the taxable year or years specified in part (b) of this sentence to which they are properly allocable under the new method of accounting and the balance of the adjustments required by paragraph (1) (b) was allocated to the taxable year of the change.

(4) For purposes of paragraphs (2) and (3) there shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (3) but which is affected by a net operating loss (as defined in section 290.095) or by a capital loss carryover (as defined in section 290.16, subdivision 6), determined with ref-

erence to taxable years with respect to which adjustments under paragraph (3) are allocated. The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined for such year.

(5) In the case of any change described in paragraph (1), the taxpayer may, in such manner and subject to such conditions as the commissioner may by regulations prescribe, take the adjustments required by paragraph (1) (b) into account in computing the tax imposed by this chapter for the taxable year or years permitted under such regulations.

(6) This subdivision shall not apply to a change to which subdivision 5 (relating to change to installment method) applies.

Subd. 4. **Refunded income.** If (a) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item, and (b) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item, and (c) the amount of such deduction exceeds $3,000, then the tax imposed by this chapter for the taxable year shall be the lesser of the following: (d) the tax for the taxable year computed with such deduction; or (e) an amount equal to (1) the tax for the taxable year computed without such deduction, minus (2) the decrease in tax under this chapter for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

If the decrease in tax ascertained under part (e) (2) of the preceding paragraph exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year. The preceding paragraph does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments made by a regulated public utility (as defined in section 7701(a)(33) of the Internal Revenue Code of 1954 as amended through December 31, 1979 without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the government, political subdivision, agency, or instrumentality referred to in such section.

Subd. 5. **Property sold on installment plan.** (1) Under regulations prescribed by the commissioner, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.

(2) Income from a sale or other disposition of real property, or from a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding $1,000, may (under regulations prescribed by the commissioner) be returned on the basis and in the manner prescribed in paragraph (1). The preceding sentence shall apply in

the case of a sale or other disposition during a taxable year beginning after December 31, 1954 (whether or not such taxable year ends after the date of enactment of this act), only if in the taxable year of the sale or other disposition there are no payments or the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

(3) The filing of a return by a corporation reporting income from the sale of property on an installment basis shall constitute an election which election shall be irrevocable unless changed on or before the due date for filing return.

(4) If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation, and (a) in the case of satisfaction at other than face value or a sale or exchange the amount realized, or (b) in case of a distribution, transmission or disposition otherwise than by sale or exchange the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. Except as provided in section 290.077 (relating to recipients of income in respect of decedents), this paragraph (4) shall not apply to the transmission of installment obligations at death. If an installment obligation is distributed by one corporation to another corporation in the course of a liquidation, and under section 290.134, subdivision 2 no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation, then no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the distributing corporation. If an installment obligation is distributed by a corporation in the course of a liquidation, and under section 290.135, subdivision 2, no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution, then no gain or loss shall be recognized to such corporation by reason of such distribution.

(5) If a taxpayer entitled to the benefits of paragraph (1) of this subdivision elects for any taxable year to report his net income and taxable net income on the installment basis, then in computing his net income and taxable net income for such year (referred to in this and the succeeding two paragraphs as "year of change") or for any subsequent year, (a) installment payments actually received during any such year on account of sales or other dispositions of property made in any taxable year before the year of change shall not be excluded; but (b) the tax imposed by this chapter for any taxable year (referred to in this and the succeeding two paragraphs as "adjustment year") beginning after December 31, 1954, shall be reduced by the adjustment computed under paragraph (6).

(6) In determining the adjustment referred to in paragraph (5) (b) first determine, for each taxable year before the year of change, the amount which equals the lesser of: (a) the portion of the tax for such prior taxable year which is attributable to the gross profit which was included in gross income for such prior taxable year, and which by reason of paragraph (5) (a) is includible in gross income for the taxable year, or (b) the portion of the tax for the adjustment year which is attributable to the gross profit described in subparagraph (a) of this paragraph. The adjustment referred to in paragraph (5) (b) for the adjustment year is the sum of the amounts determined under the preceding sentence.

(7) For purposes of paragraph (6), the portion of the tax for a prior taxable year, or for the adjustment year, which is attributable to the gross profit described in such paragraph is that amount which bears the same ratio to the tax

imposed by this chapter (or by the corresponding provisions of prior Minnesota income tax laws) for such taxable year (computed without regard to paragraph (6)) as the gross profit described in such paragraph bears to the gross income for such taxable year.

Subd. 5a. **Revolving credit plans.** For purposes of subdivision 5, the term "installment plan" includes a revolving credit type plan which provides that the purchaser of personal property at retail may pay for such property in a series of periodic payments of an agreed portion of the amounts due the seller under the plan except that such term does not include any such plan with respect to a purchaser who uses his account primarily as an ordinary charge account.

Subd. 6. **Items included in gross income.** The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision 2, such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under section 290.31) accrued only by reason of the death of the taxpayer, shall not be included in computing net income for the period in which falls the date of the taxpayer's death.

Subd. 7. **Deductions, credits; time for taking.** The deductions and credits provided for in this chapter shall be taken for a taxable year in which "paid or accrued" or "paid and incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under section 290.31) accrued as deductions and credits only by reason of the death of the taxpayer shall not be allowed in computing net income for the period in which falls the date of the taxpayer's death.

If the taxpayer contests an asserted liability or the taxpayer transfers money or other property to provide for the satisfaction of the asserted liability and the contest with respect to the asserted liability exists after the time of the transfer; and but for the fact that the asserted liability is contested a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year), then the deduction shall be allowed for the taxable year of the transfer. This paragraph shall not apply in respect to the deduction for war profits and excess profit taxes imposed by the authority of any foreign country or possession of the United States.

History: *1933 c 405 s 9; 1939 c 446 s 4; 1945 c 604 s 4,5; 1947 c 635 s 5; 1955 c 426 s 1; 1957 c 621 s 10; 1957 c 772 s 1; 1961 c 507 s 1; 1965 c 488 s 1; 1965 c 489 s 1; 1971 c 761 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 419 s 3; 1980 c 607 art 1 s 32 (2394-9)*

290.071 INCOME FROM UNITED STATES BONDS, LONG TERM PROJECTS, INVENTION OR ARTISTIC WORK, BACK PAY, BAD DEBTS, CONTRACT DAMAGES.

Subdivision 1. **United States bonds.** In the case of obligations of the United States issued at a discount and redeemable for fixed amounts increasing at stated intervals, a corporate taxpayer may at its election treat such increase as income, notwithstanding the fact that such taxpayer files its returns on the cash basis.

Subd. 2. **Long term projects.** (1) If an individual or partnership engages in an employment as defined in paragraph (2), and the employment covers a

period of 36 months or more (from the beginning to the completion of such employment), and the gross compensation from the employment received or accrued in the taxable year of the individual or partnership is not less than 80 percent of the total compensation from such employment, then the tax attributable to any part of the compensation which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period preceding the date of receipt or accrual.

(2) For purposes of this subdivision, the term "an employment" means an arrangement or series of arrangements for the performance of personal services by an individual or partnership to effect a particular result, regardless of the number of sources from which compensation therefor is obtained.

(3) An individual who is a member of a partnership receiving or accruing compensation from an employment of the type described in paragraph (1) shall be entitled to the benefits of that paragraph only if the individual has been a member of the partnership continuously for a period of 36 months or the period of the employment immediately preceding the receipt or accrual. In such a case the tax attributable to the part of the compensation which is includible in the gross income of the individual shall not be greater than the aggregate of the taxes which would have been attributable to that part had it been included in the gross income of the individual ratably over the period in which it was earned or the period during which the individual continuously was a member of the partnership, whichever period is the shorter. For purposes of this paragraph, a member of a partnership shall be deemed to have been a member of the partnership for any period, ending immediately prior to becoming such a member, in which he was an employee of such partnership, if during the taxable year he received or accrued compensation attributable to employment by the partnership during such period. This paragraph shall apply only to amounts received or accrued after December 31, 1954. Notwithstanding any other provisions of this act, section 290.071, subdivision 2 shall apply to amounts received or accrued as a partner on or before December 31, 1954 and to the computation of tax on amounts received or accrued on or before December 31, 1954.

Subd. 3. **Invention, artistic work.** If (a) an individual includes in gross income amounts in respect of a particular invention or artistic work created by the individual; and (b) the work on the invention or the artistic work covered a period of 24 months or more (from the beginning to the completion thereof); and (c) the amounts in respect of the invention or the artistic work includible in gross income for the taxable year are not less than 80 percent of the gross income in respect of such invention or artistic work in the taxable year plus the gross income therefrom in previous taxable years and the 12 months immediately succeeding the close of the taxable year, then the tax attributable to the part of such gross income of the taxable year which is not taxable as a gain from the sale or exchange of a capital asset held for more than six months shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over, in the case of an invention, that part of the period preceding the close of the taxable year or 60 months, whichever is shorter, or, in the case of an artistic work, that part of the period preceding the close of the taxable year but not more than 36 months.

For purposes of this subdivision, (a) the term "invention" means a patent covering an invention of the individual, and (b) the term "artistic work" means a literary, musical, or artistic composition or a copyright covering a literary, musical, or artistic composition.

Subd. 4. **Back pay.** If the amount of the back pay received or accrued by an individual during the taxable year exceeds 15 percent of the gross income of the individual for such year, the part of the tax attributable to the inclusion of

such back pay in gross income for the taxable year shall not be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the taxable years to which such portions are respectively attributable, as determined under the regulations prescribed by the commissioner.

For purposes of the preceding paragraph, the term "back pay" means amounts includible in gross income which are one of the following: (A) remuneration, including wages, salaries, retirement pay, and other similar compensation, which is received or accrued during the taxable year by an employee for services performed prior to the taxable year for his employer and which would have been paid prior to the taxable year except for the intervention of one of the following events: (i) bankruptcy or receivership of the employer; (ii) dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings; (iii) if the employer is the United States, a state, a territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any of the foregoing, lack of funds appropriated to pay such remuneration; or (iv) any other event determined to be similar in nature under regulations prescribed by the commissioner; and (B) wages or salaries which are received or accrued during the taxable year by an employee for services performed prior to the taxable year for his employer and which constitute retroactive wage or salary increases ordered, recommended, or approved by any federal or state agency, and made retroactive to any period prior to the taxable year; and (C) payments which are received or accrued during the taxable year as the result of an alleged violation by an employer of any state or federal law relating to labor standards or practices, and which are determined under regulations prescribed by the commissioner to be attributable to a prior taxable year.

Subd. 5. **Bad debts.** Income attributable to the recovery during the year of a bad debt, on account of which a deduction or credit was allowed for a prior taxable year, shall be included in gross income only to the extent that the deduction or credit resulted in a reduction of the tax imposed by this chapter for such prior year.

Subd. 6. **Breach of contract damages.** (a) **General rule.** If an amount representing damages is received or accrued by a taxpayer during a taxable year as a result of an award in a civil action for breach of contract or breach of a fiduciary duty or relationship, then the tax attributable to the inclusion in gross income for the taxable year of that part of such amount which would have been received or accrued by the taxpayer in a prior taxable year or years but for the breach of contract, or breach of a fiduciary duty or relationship, shall not be greater than the aggregate of the increases in taxes which would have resulted had such part been included in gross income for such prior taxable year or years.

(b) **Credits and deductions allowed in computation of tax.** The taxpayer in computing said tax shall be entitled to deduct all credits and deductions for depletion, depreciation, and other items to which he would have been entitled, had such income been received or accrued by the taxpayer in the year during which he would have received or accrued it, except for such breach of contract or for such breach of a fiduciary duty or relationship. The credits, deductions, or other items referred to in the prior sentence, attributable to property, shall be allowed only with respect to that part of the award which represents the taxpayer's share of income from the actual operation of such property.

(c) **Limitation.** Paragraph (a) shall not apply unless the amount representing damages is $3,000 or more.

History: *1943 c 656 s 3; 1945 c 413 s 1,2; 1955 c 30 s 1; 1961 c 260 s 1; 1980 c 419 s 4*

290.072 [Repealed, 1975 c 349 s 31]

290.073 GROSS INCOME, COMMODITY CREDIT LOANS.

Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income, and included in gross income for the taxable year in which received. If the taxpayer so elects, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the commissioner a change to a different method is authorized.

History: *1943 c 656 s 22; 1980 c 419 s 5*

290.074 [Repealed, 1947 c 635 s 21]

290.075 RENEGOTIATED WAR CONTRACTS.

Any taxpayer who supplies any goods, wares and merchandise or performs services, or both, under any contract, with the United States of America, or under any subcontract thereunder, or under a cost-plus-a-fixed-fee contract with the United States of America, or any agency thereof and who is subject to renegotiations under the renegotiation laws of the United States of America, or is required to renegotiate with his subcontractor, shall be required to adjust his or its Minnesota income and franchise tax liability in accordance with the following rules:

A return shall be filed and the income and franchise tax computed, on the basis of the Minnesota taxable net income without giving effect to any renegotiations occurring after the close of the taxable year. If after the close of the taxable year there is a final determination under renegotiation, the difference between (1) the amount determined by the renegotiation to be (a) excess profits, (b) excess fees under a fixed fee contract with the United States, or any agency thereof, or (c) the amount of any item for which the taxpayer has been reimbursed but which is disallowed as an item of cost chargeable to a fixed fee contract, and (2) the amount of federal income and excess profits taxes applicable thereto, shall be allowed as a deduction from gross income in the taxable year in which said final determination is made, but only to the extent that such renegotiated profits, fees or amounts were included in the taxable net income in a prior year. If the taxable net income for the taxable year in which said final determination is made is less than said deduction, the taxpayer shall be entitled to a refund of the state income tax which it has paid on the difference between said deduction and said taxable income. This section shall apply to all taxable years ending after December 31, 1941, notwithstanding the expiration of the period of limitation provided by law; provided, that no refund shall be allowed unless a claim therefor is filed as provided by law within three and one-half years after the return was filed or two years after the tax was paid or collected, whichever period is the longer. The certificate of the agency or instrumentality of the United States conducting such renegotiation proceedings shall be evidence of the amount of the renegotiated profit and of the date thereof.

History: *1943 c 656 s 26; 1945 c 604 s 6; 1951 c 578 s 1*

290.076 INCOME FROM SERVICES OF CHILD, WHERE INCLUDED.

Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child. All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of this section shall be deemed to have been paid or incurred by the child. For the purposes of this section the term "parent" includes an individual who is entitled to the services of a child by

reason of having parental rights and duties in respect to the child. Any tax assessed against the child to the extent attributable to amounts includible in the gross income of the child and not of the parent solely by reason of this section shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

History: *1945 c 604 s 13*

290.077 INCOME IN RESPECT OF DECEDENTS.

Subdivision 1. **Inclusion in gross income.** (1) The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received; of:

(A) The estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) The person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not required by the decedent's estate from the decedent; or

(C) The person who acquires from the decedent the right to receive the amount by bequest, devise or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who receives such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For the purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent except as provided in subdivision 3.

(3) The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived; and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) In the case of an installment obligation received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 290.07, subdivision 3, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(a) An amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under

section 290.07, subdivision 3) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(b) Such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 290.07, subdivision 3).

Subd. 2. **Allowance of deductions and credit.** The amount of any deductions specified in sections 290.09, subdivisions 2, 3, 4, or 8 (relating to deductions for expenses, interest, taxes and depletion) in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) In the case of a deduction specified in sections 290.09, subdivisions 2, 3, or 4, in the taxable year when paid

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction relates, to the person who, by reason of the death of the decedent or by bequest, devise or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) In the case of the deduction specified in section 290.09, subdivision 8 to the person described in subdivision 1 (1), (A) (B) or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

Subd. 3. **Transfers to nonresidents.** (1) If a right described in subdivision 1 to receive an amount is transferred to a nonresident by the personal representative of an estate, the fair market value of such right at the date of the transfer shall be included in the gross income of the estate for the year in which such transfer occurs and the value of such right shall not be allowed as a deduction in computing the taxable net income of the estate. The estate shall not include the value of such right in its gross income and the personal representative shall be relieved of any further liability with respect to such right if the nonresident; (A) includes the fair market value of such right (as of the date the right is received) in his gross income for the year such right is received and pays the tax thereon, or (B) elects to include the amount received in payment of such right in his gross income for the year in which such payment is received and pays the tax thereon in the same manner as a resident of this state and files a bond with the commissioner of revenue during the year such right is received, in such form and in such amount as the commissioner may deem necessary to assure payment of the tax. A bond required under (B) shall be deemed sufficient if in an amount equivalent to the tax which would be due if the method provided in (A) were followed.

Subd. 4. **Deduction for federal estate tax and Minnesota inheritance or estate tax.** (1) **Allowance of deduction; federal estate tax.** (A) **General rule.** A person who includes an amount in gross income under this section, shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subdivision 1, as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subdivision 1.

(B) **Estates and trusts.** In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) of this subdivision shall be computed by excluding from the gross income of the estate or trust the portion (if

any) of the items described in subdivision 1, which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year. This subparagraph shall apply to the same taxable years, and to the same extent, as is provided in section 290.23, subdivision 5.

(2) **Method of computing deduction.** For purposes of paragraph (1) of this subdivision

(A) The term "estate tax" means the tax imposed on the estate of the decedent or any prior decedent under the Internal Revenue Code of 1954, as amended through December 31, 1979 section 2001 or 2101, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subdivision 1, shall be the excess of the value for estate tax purposes of all the items described in subdivision 1, over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subdivision 2. Such net value shall be determined with regard to the provisions of the Internal Revenue Code of 1954, as amended through December 31, 1979, section 421(c)(2), relating to the deduction for estate tax with respect to restricted stock options.

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

(3) **Allowance of deduction; Minnesota inheritance or estate tax.** (A) **General rule.** A person who includes an amount in gross income under this section, shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the Minnesota inheritance or estate tax attributable to the net value for inheritance or estate tax purposes of all the items described in subdivision 1, as the value for inheritance or estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for inheritance or estate tax purposes of all the items described in subdivision 1.

(B) **Estates and trusts.** In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) of this subdivision shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subdivision 1, which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year. This subparagraph shall apply to the same taxable years, and to the same extent as is provided in section 290.23, subdivision 5.

(4) **Method of computing deduction.** For purposes of paragraph (3) of this subdivision

(A) (i) The term "inheritance tax" means the tax imposed on the estates of decedents dying before January 1, 1980, reduced by the credits against such tax; (ii) The term "estate tax" means the tax imposed on the estates of decedents dying on or after January 1, 1980, reduced by the credits against the tax.

(B) The net value for inheritance or estate tax purposes of all the items described in subdivision 1, shall be the excess of the value for inheritance or estate tax purposes of all the items described in subdivision 1, over the deductions from the gross inheritance or gross estate in respect of claims which represent the deductions and credit described in subdivision 2.

(C) (i) The inheritance tax attributable to such net value shall be an amount equal to the excess of the inheritance tax over the inheritance tax computed without including in the gross inheritance such net value; (ii) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate the net value.

History: *1945 c 604 s 17; 1957 c 761 s 1; 1961 c 478 s 1; 1971 c 769 s 2; 1973 c 582 s 3; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1980 c 419 s 6; 1980 c 439 s 2; 1980 c 607 art 1 s 32*

290.078 [Repealed, 1965 c 677 s 2]

290.0781 CERTAIN STOCK OPTIONS.

Any person as defined in section 290.01, subdivision 2, who issues, receives or exercises any qualified stock option or restricted stock option or who is a party to any employee stock purchase plan, shall have the tax consequences of such participation determined in accordance with the provisions of sections 421 through 425 of the Internal Revenue Code of 1954 as amended through December 31, 1976.

The commissioner may adopt appropriate regulations implementing the provisions of this section.

History: *1965 c 677 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13*

290.079 INTEREST ON CERTAIN DEFERRED PAYMENTS.

Subdivision 1. **Amount constituting interest.** For purposes of this chapter, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applied which are due under such contract.

Subd. 2. **Total unstated interest.** For purposes of this section, the term "total unstated interest" means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of:

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of paragraph (2), the present value of a payment shall be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the commissioner. Such regulations shall provide for discounting on the basis of 6-month brackets and shall provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange is an amount equal to 100 percent of such payment.

Subd. 3. **Payment to which section applies.** (1) **In general.** Except as provided in subdivision 6, this section shall apply to any payment on account of sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract.

(A) under which some or all of the payments are due more than one year after the date of such sale or exchange, and

(B) under which, using a rate provided by regulations prescribed by the commissioner for purposes of this subparagraph, there is total unstated interest.

Any rate prescribed for determining whether there is total unstated interest for purposes of subparagraph (B) shall be at least one percentage point lower than the rate prescribed for purposes of subdivision 2(2).

(2) **Treatment of evidence of indebtedness.** For purposes of this section, an evidence of indebtedness of the purchaser given in consideration for the sale or exchange of property shall not be considered a payment, and any payment due

under such evidence of indebtedness shall be treated as due under the contract for the sale or exchange.

Subd. 4. **Payments that are indefinite as to time, liability, or amount.** In the case of a contract for the sale or exchange of property under which the liability for, or the amount or due date of, any portion of a payment cannot be determined at the time of the sale or exchange, this section shall be separately applied to such portion as if it (and any amount of interest attributable to such portion) were the only payments due under the contract; and such determinations of liability, amount, and due date shall be made at the time payment of such portion is made.

Subd. 5. **Change in terms of contract.** If the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property is changed, the "total unstated interest" under the contract shall be recomputed and allocated (with adjustment for prior interest (including unstated interest) payments) under regulations prescribed by the commissioner.

Subd. 6. **Exceptions and limitations.** (1) **Sales price of $3,000 or less.** This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

(2) **Carrying charges.** In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 290.09, subdivision 3(c) as if they included interest.

(3) **Treatment of seller.** In the case of the seller, the tax treatment of any amounts received on account of the sale or exchange of property shall be made without regard to this section if no part of any gain on such sale or exchange would be considered as gain from the sale or exchange of a capital asset or property described in section 290.16, subdivision 9.

(4) **Annuities.** This section shall not apply to any amount the liability for which depends in whole or in part on the life expectancy of one or more individuals and which constitutes an amount received as an annuity to which section 290.08, subdivision 4 applies.

History: *1965 c 645 s 1*

290.08 EXEMPTIONS FROM GROSS INCOME.

Subdivision 1. **In general.** The following items shall not be included in gross income, provided that any item which was excluded in arriving at gross income under the provisions of section 290.01, subdivision 20, shall not be again excluded under this section.

Subd. 2. **Gifts and inheritances.** The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or inheritance of a right to receive income shall also be included in gross income. Amounts paid, credited, or to be distributed at intervals, under the terms of the gift, devise or inheritance, shall be included in gross income of the recipient to the extent paid, credited, or to be distributed out of income;

Subd. 3. **Certain death benefits.** The exclusion of certain death benefits shall be determined in accordance with the provisions of section 101 of the Internal Revenue Code of 1954 as amended through December 31, 1979.

Subd. 4. [Repealed, 1980 c 419 s 46]

Subd. 5. [Repealed, 1980 c 419 s 46]

Subd. 6. [Repealed, 1978 c 721 art 6 s 2]

Subd. 7. **Interest from state or governmental subdivisions thereof.** Interest upon obligations of the state of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;

Subd. 8. **Interest from United States.** Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law.

Subd. 9. [Repealed, 1975 c 349 s 31]

Subd. 10. [Repealed, 1975 c 349 s 31]

Subd. 11. [Repealed, 1975 c 349 s 31]

Subd. 12. **Patronage dividends of cooperatives.** The amounts distributed by cooperative buying, selling or producing associations, however organized as patronage dividends shall not be included in the gross income of such associations;

Subd. 13. **Certain exemptions inapplicable to corporations.** Subdivisions 7 and 8 shall not apply to corporations taxable under section 290.02 or under section 290.361.

Subd. 14. **Improvements by lessee.** Income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by a lessee;

Subd. 15. [Repealed, 1975 c 349 s 31]

Subd. 16. [Repealed, 1975 c 349 s 31]

Subd. 17. [Repealed, 1975 c 349 s 31]

Subd. 18. [Repealed, 1975 c 349 s 31]

Subd. 19. **Contributions to corporate capital.** In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

Subd. 20. **Income from discharge of indebtedness.** No amount shall be included in gross income by reason of the discharge, in whole or in part, within the taxable year, of any indebtedness for which the taxpayer is liable, or subject to which the taxpayer holds property, if the indebtedness was incurred or assumed by a corporation, or by an individual in connection with property used in his trade or business, and such taxpayer makes and files a consent to the regulations prescribed under the last paragraph of this subdivision then in effect at such time and in such manner as the commissioner by regulation prescribes.

In such case, the amount of any income of such taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction.

Where any amount is excluded from gross income under this subdivision the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under the preceding paragraph) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the commissioner) in effect at the time of the filing of the consent by the taxpayer. The reduction shall be made as of the first day of the taxable year in which the discharge occurred, except in the case of property not

held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began.

Subd. 21. **Highway patrol subsistence allowance.** Gross income does not include statutory subsistence allowance paid pursuant to the provisions of section 299D.03, subdivision 2, and acts amendatory thereto. If any individual received a subsistence allowance to which this subdivision applies, no deduction shall be allowed under any other provision of Minnesota Statutes 1957, Chapter 290, and acts amendatory thereto, for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable under this subdivision and the excess is otherwise allowable as a deduction under Minnesota Statutes 1957, Chapter 290, and acts amendatory thereto.

Subd. 22. [Repealed, 1975 c 349 s 31]

Subd. 23. **Commuter van use.** Gross income shall not include benefits derived by a driver from the personal use of a commuter van owned by a person other than the driver. For purposes of this subdivision, commuter van shall mean a motor vehicle having a capacity of seven to 16 persons which is used principally to provide prearranged transportation of persons to or from their place of employment or to or from a transit stop authorized by a local transit authority which vehicle is to be operated by a person who does not drive the vehicle for his principal occupation but is driving it only to or from his principal place of employment, to or from a transit stop authorized by a local transit commission, or for personal use when authorized by the owner. The exemption shall not apply to monetary compensation received by a person in return for his services in driving the van.

Subd. 24. **Family farm security loan interest.** Gross income shall not include interest, including payment adjustment to the extent that it is applied to interest, earned by the seller of property on a family farm security loan executed before January 1, 1982 that is guaranteed by the commissioner of agriculture as provided in sections 41.51 to 41.60.

History: *1933 c 405 s 12; Ex1937 c 49 s 7; 1939 c 446 s 5,6; 1941 c 18 s 4; 1941 c 550 s 5,6; 1943 c 656 s 5,21; 1945 c 449 s 1; 1945 c 604 s 8; 1947 c 635 s 6; 1949 c 734 s 6; 1951 c 608 s 1; 1955 c 22 s 1; 1955 c 27 s 1; 1955 c 190 s 1; 1957 c 889 s 1; Ex1959 c 70 art 3 s 6; 1961 c 213 art 4 s 2; 1961 c 463 s 1; 1961 c 501 s 2,14; 1965 c 51 s 58; 1967 c 900 s 1; 1967 c 901 s 1; 1969 c 575 s 2; 1971 c 24 s 27,28; 1971 c 769 s 2; 1973 c 459 s 1; 1973 c 711 s 3; 1974 c 145 s 1; 1975 c 349 s 29; 1975 c 359 s 23; 1976 c 233 s 11; 1977 c 376 s 13; 1977 c 423 art 1 s 6; 1977 c 429 s 63; 1978 c 763 s 3; 1978 c 772 s 62; 1980 c 419 s 7-9; 1980 c 607 art 1 s 8 (2394-12)*

NOTE: The exemption provided by section 290.08, Subdivision 24, is effective for interest received during taxable years beginning after December 31, 1977 on loans executed before January 1, 1982. See Laws 1980, Chapter 607, Article 1, Section 34.

290.0801 [Repealed, 1975 c 349 s 31]

290.081 INCOME OF NONRESIDENTS, RECIPROCITY.

(a) The compensation received for the performance of personal or professional services within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein, or

(b) Whenever a nonresident taxpayer has become liable for income taxes to the state where he resides upon his net income for the taxable year derived from the performance of personal or professional services within this state and subject to taxation under this chapter, there shall be allowed as a credit against

the amount of income tax payable by him under this chapter, such proportion of the tax so paid by him to the state where he resides as his gross income subject to taxation under this chapter bears to his entire gross income upon which the tax so paid to such other state was imposed; provided, that such credit shall be allowed only if the laws of such state grant a substantially similar credit to residents of this state subject to income tax under such laws, or

(c) If any taxpayer who is a resident of this state, or a domestic corporation or corporation commercially domiciled therein, has become liable for taxes on or measured by net income to another state or a province or territory of Canada upon, if the taxpayer is an individual or a resident estate or resident trust, any income, or if it is a corporation, upon income derived from the performance of personal or professional services within such other state or province or territory of Canada and subject to taxation under this chapter he or it shall be entitled to a credit against the amount of taxes payable under this chapter, of such proportion thereof, as such gross income subject to taxation in such state or province or territory of Canada bears to his entire gross income subject to taxation under this chapter; provided (1) that such credit shall in no event exceed the amount of tax so paid to such other state or province or territory of Canada on the gross income earned within such other state or province or territory of Canada and subject to taxation under this chapter, and (2) that such credit shall not be allowed if such other state or province or territory of Canada allows residents of this state a credit against the taxes imposed by such state or province or territory of Canada for taxes payable under this chapter substantially similar to the credit provided for by paragraph (b) of this section, and (3) the allowance of such credit shall not operate to reduce the taxes payable under this chapter to an amount less than would have been payable if the gross income earned in such other state or province or territory of Canada had been excluded in computing net income under this chapter.

(d) The commissioner shall by regulation determine with respect to gross income earned in any other state the applicable clause of this section. When it is deemed to be in the best interests of the people of this state, the commissioner may determine that the provisions of clause (a) shall not apply.

(e) "Tax So Paid" as used in this section means taxes on or measured by net income payable to another state or province or territory of Canada on income earned within the taxable year for which the credit is claimed, provided that such tax is actually paid in that taxable year, or subsequent taxable years.

(f) For the purposes of clause (a), whenever the Wisconsin tax on Minnesota residents which would have been paid Wisconsin without clause (a) exceeds the Minnesota tax on Wisconsin residents which would have been paid Minnesota without clause (a), or vice versa, then the state with the net revenue loss resulting from clause (a) shall receive from the other state the amount of such loss. This provision shall be effective for all years beginning after December 31, 1972. The data used for computing the loss to either state shall be determined on or before September 30 of the year following the close of the previous calendar year.

Interest shall be payable on all delinquent balances relating to taxable years beginning after December 31, 1977. The commissioner of revenue is authorized to enter into agreements with the state of Wisconsin specifying the reciprocity payment due date, conditions constituting delinquency, interest rates, and a method for computing interest due on any delinquent amounts.

If an agreement cannot be reached as to the amount of the loss, the commissioner of revenue and the taxing official of the state of Wisconsin shall each appoint a member of a board of arbitration and these members shall appoint the third member of the board. The board shall select one of its members as chair-

man. Such board may administer oaths, take testimony, subpoena witnesses, and require their attendance, require the production of books, papers and documents, and hold hearings at such places as are deemed necessary. The board shall then make a determination as to the amount to be paid the other state which determination shall be final and conclusive.

Notwithstanding the provisions of section 290.61, the commissioner may furnish copies of returns, reports, or other information to the taxing official of the state of Wisconsin, a member of the board of arbitration, or a consultant under joint contract with the states of Minnesota and Wisconsin for the purpose of making a determination as to the amount to be paid the other state under the provisions of this section. Prior to the release of any information under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that he will protect the confidentiality of the returns and information revealed thereby to the extent that it is protected under the laws of the state of Minnesota.

History: *1941 c 429; 1943 c 656 s 19; 1959 c 10 s 1; 1961 c 213 art 3 s 1; 1967 c 42 s 1; 1973 c 582 s 3; 1973 c 650 art 6 s 1; 1977 c 387 s 1; 1977 c 423 art 1 s 7; 1979 c 303 art 1 s 13; 1980 c 607 art 1 s 9*

290.082 CREDIT FOR OCCUPATION TAX ON THE MINING OR PRODUCTION OF COPPER-NICKEL ORES.

The amount of occupation tax paid or accrued during the taxable year by any taxpayer in respect of mining or producing of copper-nickel ores in this state shall be a credit against the amount of taxes payable under this chapter in respect of such taxable year, provided that in any year in which such tax exceeds the amount of taxes under this chapter, the amount of such excess may be applied as credit against the tax imposed under this chapter during any succeeding taxable years, not exceeding three, until used.

History: *1967 c 671 s 2*

290.085 GROSS INCOME, DIVIDENDS FROM STATE AND NATIONAL BANKS.

By reason of the adoption of method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of Revised Statutes of the United States whereby a state may impose an excise tax upon national banks, and the state having elected, in section 290.361, to impose such tax, every taxpayer taxable under this chapter must include in gross income dividends received from national banks (to the extent permitted by said section 5219) and dividends from state banks in the same manner and to the same extent as other dividend income is includible in gross income for the purpose of computing his taxable net income.

History: *1941 c 18 s 2*

290.086 [Repealed, 1980 c 419 s 46]

290.087 [Repealed, 1980 c 419 s 46]

290.09 DEDUCTIONS FROM GROSS INCOME.

Subdivision 1. **Limitations.** The following deductions from gross income shall be allowed in computing net income, provided that any item which was deducted in arriving at gross income under the provisions of section 290.01, subdivision 20, shall not be again deducted under this section.

Subd. 2. **Trade or business expenses; expenses for production of income.** (a) In General. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) Traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and

(3) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity. For purposes of the preceding sentence, the place of residence of a member of congress within the state shall be considered his home, but amounts expended by such members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

(b) Expenses for Production of Income. In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year.

(1) For the production or collection of income;

(2) For the management, conservation, or maintenance of property held for the production of income; or

(3) In connection with the determination, collection, or refund of any tax.

(c) Campaign expenditures in an amount not to exceed the limits set out in section 210A.22, not subsequently reimbursed, which have been personally paid by a candidate for public office if the candidate has complied with the expenditure limitations set out in section 210A.22:

(No deduction shall be allowed under this clause for any contribution or gift which would be allowable as a credit under section 290.21 were it not for the percentage limitations set forth in such section);

(d) All expense money paid by the legislature to legislators;

(e) The provisions of section 280A (disallowing certain expenses in connection with the business use of the home and rental of vacation homes) of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall be applicable in determining the availability of any deduction under this subdivision.

(f) Entertainment, amusement, or recreation expenses shall be allowed under this subdivision only to the extent that they qualify as a deduction under section 274 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

Subd. 3. **Interest.** (a) All interest paid or accrued within the taxable year on indebtedness, except as hereinafter provided.

(b) Interest paid or accrued within the taxable year on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludable from gross income under section 290.08, or shares of a regulated investment company which during the taxable year of the holder thereof distributes Minnesota exempt-interest dividends as defined in section 290.01, subdivision 27, or on indebtedness incurred or continued in connection with the purchasing or carrying of a single premium life insurance, annuity, or endowment contract, shall not be allowed as a deduction. (For purposes of this paragraph, a contract shall be treated as a single premium contract if substantially all the premiums on the contract are paid within a period of four years from the date on which the contract is purchased, or if an amount is deposited after January 1, 1955 with the insurer for payment of a substantial number of future premiums on the contract.)

(c) If personal property or educational services are purchased under a contract which provides that payment of part or all of the purchase price is to be made in installments, and in which carrying charges are separately stated but the

interest charge cannot be ascertained, then the payments made during the taxable year under the contract shall be treated for purposes of this paragraph as if they included interest equal to six percent of the average unpaid balance under the contract during the taxable year, and such interest shall be allowed as a deduction. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. In the case of any contract to which this paragraph applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

For purposes of this subdivision the term "educational services" means any service including lodging which is purchased from an educational institution (as defined in section 151(e) (4) of the Internal Revenue Code of 1954, as amended through December 31, 1979) and which is provided for a student of such institution.

(d) A cash basis taxpayer may elect to deduct interest as it accrues on a reverse mortgage loan as defined in section 47.58, subdivision 1, rather than when it is actually paid. This election must be made, if at all, in the first taxable year in which it is available to the cash basis taxpayer and, if made, shall be binding on the taxpayer for each subsequent taxable year until maturity of the loan.

Subd. 4. **Taxes.** Taxes paid or accrued within the taxable year, except (a) income or franchise taxes imposed by this chapter and income or franchise taxes paid to any other state or to any province or territory of Canada for which a credit is allowed under section 290.081; (b) taxes assessed against local benefits of a kind deemed in law to increase the value of the property assessed; (c) inheritance, gift and estate taxes except as provided in section 290.077, subdivision 4; (d) cigarette and tobacco products excise tax imposed on the consumer; (e) that part of Minnesota property taxes for which a credit or refund is claimed and allowed under chapter 290A; (f) federal income taxes, by corporations, national and state banks except as provided in section 290.18; (g) mortgage registry tax; (h) real estate transfer tax; (i) federal telephone tax; (j) federal transportation tax; and (k) tax paid by any corporation or national or state bank to any foreign country or possession of the United States to the extent that a credit against federal income taxes is allowed under the provisions of the Internal Revenue Code of 1954, as amended through December 31, 1979. If the taxpayer's foreign tax credit consists of both foreign taxes deemed paid and foreign taxes actually paid or withheld, it will be conclusively presumed that foreign taxes deemed paid were first used by the taxpayer in its foreign tax credit. Minnesota gross income shall include the amount of foreign tax paid which had been allowed as a deduction in a previous year, provided such foreign tax is later allowed as a credit against federal income tax. Income taxes permitted to be deducted hereunder shall, regardless of the methods of accounting employed, be deductible only in the taxable year in which paid. Taxes imposed upon a shareholder's interest in a corporation which are paid by the corporation without reimbursement from the shareholder shall be deductible only by such corporation.

Subd. 5. **Losses.** (a) **General rule.** There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) **Amount of deduction.** For purposes of paragraph (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in sections 290.14 and 290.15 for determining the loss from the sale or other disposition of property.

(c) **Limitation of losses of individuals.** In the case of an individual, the deduction under paragraph (a) shall be limited to

(1) Losses incurred in a trade or business;

(2) Losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) Losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft to the extent they are deductible pursuant to the provisions of section 165 (c) (3) of the Internal Revenue Code of 1954, as amended through December 31, 1979. No loss described in this paragraph shall be allowed if, at the time of the filing of the return, such loss has been claimed for inheritance or estate tax purposes.

(d) **Wagering losses.** Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) **Theft losses.** For purposes of paragraph (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) **Capital losses.** Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in section 290.16.

(g) **Worthless securities.** (1) **General rule.** If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this chapter, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) **Security defined.** For purposes of this paragraph, the term "security" means:

(A) A share of stock in a corporation;

(B) A right to subscribe for, or to receive, a share of stock in a corporation; or

(C) A bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) **Securities in affiliated corporation.** For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if:

(A) At least 95 percent of each class of its stock is owned directly by the taxpayer, and

(B) More than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental from properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities. In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stock and securities shall be taken into account only to the extent of gains therefrom.

(h) **Disaster losses.** (1) Notwithstanding the provisions of (a), any loss

(A) attributable to a disaster which occurs during the period following the close of the taxable year and on or before the time prescribed by law for filing the income tax return for the taxable year (determined without regard to any extension of time), and

(B) occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under section 1855-1855g of Title 42, U.S.C.A., at the election of the taxpayer, may be deduc-

ted for the taxable year immediately preceding the taxable year in which the disaster occurred. Such election may be made only if a similar election has been made under the provisions of Section 165(h) of the Internal Revenue Code of 1954, as amended through December 31, 1979 for federal income tax purposes. Such deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred. If an election is made under this paragraph, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed.

(2) The commissioner is authorized to prescribe regulations providing the time and manner of making an election to claim a disaster loss under this clause.

(i) **Election.** In lieu of the deduction allowed by (a) or (h) any loss not compensated for by insurance or otherwise:

(1) Attributable to storm or other natural causes or fire, may, at the election of the taxpayer, be claimed as a deduction in the taxable year in which said loss is sustained or in the preceding taxable year.

(2) In the event that under the provisions of this paragraph, a taxpayer claims the same disaster loss deduction or a net operating loss deduction resulting from the inclusion of a casualty loss in the calculation of such deduction in different taxable years for state and federal purposes, appropriate modifications shall be allowed or required for taxable years affected in order to prevent duplication or omission of such deduction.

(3) The commissioner is authorized to prescribe regulations providing the time and manner to make an election to claim a loss under the provisions of this paragraph and for the filing of an amended return or claim for refund.

Subd. 6. **Bad debts.** (a) General Rule.

(1) Wholly worthless debts. There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

(2) Partially worthless debts. When satisfied that a debt is recoverable only in part, the commissioner may allow such a debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of Deduction. For purposes of paragraph (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in sections 290.14 and 290.15 for determining the loss from the sale or other disposition of property.

(c) Reserve for Bad Debts. In lieu of any deduction under paragraph (a), there shall be allowed (in the discretion of the commissioner) a deduction for a reasonable addition to a reserve for bad debts. Provided that banks taxable under the provisions of Minnesota Statutes 1957, Section 290.361, which have heretofore in any taxable year taken such deductions by the reserve method for federal income tax purposes pursuant to the Internal Revenue Code of 1954, as amended through December 31, 1979 and regulations adopted pursuant thereto may take such deductions by the same method; and provided further that each savings, building and loan association and mutual savings or cooperative bank may take as a reasonable addition to reserve for bad debts such sums as are permitted to such organizations for federal income tax purposes, for the taxable year, under section 593 of the Internal Revenue Code of 1954, as amended through December 31, 1979, but the deductions for any such organization for any one year shall not exceed the greater of the following:

(1) In the case of savings, building and loan associations not to exceed 3/10 of one percent of the outstanding share capital as of the beginning of the taxable year or ten percent of the net earnings of such year before the deduction of interest or dividends payable to its members, and

(2) In the case of mutual savings or cooperative banks 3/10 of one percent of the deposits as of the beginning of the taxable year or ten percent of the net earnings of such year before the deduction of interest or payments to its members and/or depositors.

(d) Nonbusiness Debts.

(1) General Rule. In the case of a taxpayer other than a corporation:

(A) Paragraphs (a) and (c) shall not apply to any nonbusiness debt; and

(B) Where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than six months.

(2) For purposes of subparagraph (1), the term "nonbusiness debt" means a debt other than:

(A) A debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) A debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless Securities. This section shall not apply to a debt which is evidenced by a security as defined in subdivision 5(g) (2) (C).

(f) Guarantor of Certain Noncorporate Obligations. A payment by the taxpayer (other than a corporation) in discharge of part or all of his obligation as a guarantor, endorser, or indemnitor of a noncorporate obligation the proceeds of which were used in the trade or business of the borrower shall be treated as a debt becoming worthless within such taxable year for purposes of this subdivision (except that paragraph (d) shall not apply), but only if the obligation of the borrower to the person to whom such payment was made was worthless (without regard to such guaranty, endorsement, or indemnity) at the time of such payment.

Subd. 7. **Depreciation.** (A) **Cumulative depreciation.** (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence):

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) The term "reasonable allowance" as used in clause (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the commissioner, under any of the following methods:

(1) the straight line method.

(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) the sum of the years-digits method, and

(4) any other consistent method productive of an annual allowance, which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in (2). Nothing in this clause (b) shall be construed to limit or reduce an allowance otherwise allowable under clause (a).

(c) Paragraphs (2), (3), and (4) of clause (b) shall apply only in the case of property (other than intangible property) described in clause (a) with a useful life of three years or more.

(1) the construction, reconstruction, or erection of which is completed after December 31, 1958, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1958, or

(2) acquired after December 31, 1958, if the original use of such property commenced with the taxpayer and commences after such date.

(d) Where, under regulations prescribed by the commissioner, the taxpayer and the commissioner have, after the date of enactment of Extra Session Laws 1959, Chapter 70, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the commissioner in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail is served by the party to the agreement initiating such change.

(e) In the absence of an agreement under clause (d) containing a provision to the contrary, a taxpayer may at any time elect in accordance with regulations prescribed by the commissioner to change from the method of depreciation prescribed in clause (b) (2) to the method described in clause (c) (1).

(f) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in sections 290.14 and 290.15 for the purpose of determining the gain on the sale or other disposition of such property.

(g) In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiary and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(h) In the case of buildings or other structures or improvements constructed or made on leased premises by a lessee, and the fixtures and machinery therein installed, the lessee alone shall be entitled to the allowance of this deduction.

(B) **First year depreciation.** (a) In the case of section 1 property, the term "reasonable allowance" as used in subdivision 7, may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under subdivision 7, to the taxpayer with respect to such property, of 20 percent of the cost of such property.

(b) If in any one taxable year the cost of section 1 property with respect to which the taxpayer may elect an allowance under (a) for such taxable year exceeds $10,000, then (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of $10,000. In the case of a husband and wife who file a joint return under section 290.38 for the taxable year, the limitation under the preceding sentence shall be $20,000 in lieu of $10,000.

(c) (1) The election under this subdivision for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the commissioner may by regulations prescribe.

(2) Any election made under this subdivision may not be revoked except with the consent of the commissioner.

(d) (1) For purposes of this subdivision, the term "Section 1 property" means tangible personal property (excluding buildings and structures)

(A) of a character subject to the allowance for depreciation under subdivision 7.

(B) acquired by purchase after December 31, 1958, for use in a trade or business or for holding for production of income, and

(C) with a useful life (determined at the time of such acquisition) of six years or more.

(2) For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 290.10(6),

(B) the property is not acquired by one member of an affiliated group from another member of the same affiliated group, and

(C) the basis of the property in the hands of the person acquiring it is not determined

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 290.14(4) (relating to property acquired from a decedent).

(3) For purposes of this subdivision, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) This subdivision shall not apply to trusts.

(5) In the case of an estate, any amount apportioned to an heir, legatee, or devisee shall not be taken into account in applying (B) of this subdivision to section 1 property of such heir, legatee, or devisee not held by such estate.

(6) For purposes of (B) of this subdivision

(A) all members of an affiliated group shall be treated as one taxpayer, and

(B) the commissioner shall apportion the dollar limitation contained in such (B) among the members of such affiliated group in such manner as he shall by regulations prescribe.

(7) For purposes of paragraphs (2) and (6), the term "affiliated group" has the meaning assigned to it by section 1504 of the Internal Revenue Code of 1954, as amended through December 31, 1979, except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1504(A) of the Internal Revenue Code of 1954, as amended through December 31, 1979.

Subd. 8. **Depletion.** (a) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the cases of leases the deduction shall be equitably apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(b) In the case of copper, nickel, copper-nickel listed in subsection (b) of section 613 of the Internal Revenue Code of 1954, as amended through December 31, 1979 the allowance for depletion shall be determined in accordance with the provisions of sections 613 and 614 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

Subd. 9. **Limitation and application of section.** (a) The amount of the deduction under subdivisions 7 and 8 shall be computed on the basis specified in section 290.16;

(b) The deductions provided for herein shall be taken for the taxable year in which paid or accrued, dependent upon the method of accounting employed in computing net income, unless in order to clearly reflect income they should be taken as of a different year;

(c) No deductions shall be allowed unless the taxpayer, when thereunto requested by the commissioner, furnishes him with information sufficient to enable him to determine the validity and correctness thereof.

Subd. 10. **Medical expenses.** Payments (not compensated for by insurance or otherwise) for expenses for hospital, nursing, medical, surgical, dental, and other healing services, including institutional care and treatment for the mentally ill and physically handicapped and the cost, feeding and maintenance expenses of a guide dog for a blind or deaf person, as defined in section 290.06, subdivision 3c, clauses (4) (d) and (h), and for medical supplies and ambulance hire, incurred by the taxpayer on account of sickness, mental illness, physical handicap or personal injury to himself or his dependents and premiums paid for hospitalization and medical insurance including nonprofit hospital service and nonprofit medical service plans. Payments for traveling expenses shall not be deductible under the provisions of this subdivision. Payments for hotel or similar lodging expenses shall be deductible in the same manner as payments for hospital services, if the taxpayer or his dependent is not hospitalized but is nevertheless required to remain in a medical center away from his usual place of abode, for the purpose of receiving prescribed medical treatment.

Subd. 11. [Repealed, 1980 c 419 s 46]

Subd. 12. **Income from discharge of indebtedness.** No amount shall be included in gross income by reason of the discharge, in whole or in part, within the taxable year, of any indebtedness for which the taxpayer is liable, or subject to which the taxpayer holds property, if the indebtedness was incurred or assumed by a corporation, or by an individual in connection with property used in his trade or business, and such taxpayer makes and files a consent to the regulations prescribed under the last paragraph of this subdivision then in effect at such time and in such manner as the commissioner by regulation prescribes.

In such case, the amount of any income of such taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction.

Where any amount is excluded from gross income under this subdivision the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any reduction disallowed under the preceding paragraph) and the particular properties to which the reduction shall be allocated, shall be determined under regula-

tions (prescribed by the commissioner) in effect at the time of the filing of the consent by the taxpayer. The reduction shall be made as of the first day of the taxable year in which the discharge occurred, except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began.

Subd. 13. **Amortization of bond premiums.** An allowance for amortization of bond premiums in accordance with the provisions of section 171 of the Internal Revenue Code of 1954, as amended through December 31, 1979 adapted to the provisions of this chapter under regulations issued by the commissioner, but only to the extent that such deduction has not been allowed under any other section of this chapter.

Subd. 14. [Repealed, 1978 c 766 s 19]

Subd. 15. **Standard deduction.** In lieu of all deductions provided for in this chapter other than those enumerated in section 290.18, subdivision 2, and in lieu of the credits enumerated in section 290.21, subdivision 3, an individual may claim or be allowed a standard deduction as follows:

(a) Subject to modification pursuant to clause (b), the standard deduction shall be an amount equal to ten percent of the adjusted gross income of the taxpayer, up to a maximum deduction of $2,000; in the case in which a standard deduction tax table is provided by the commissioner of revenue pursuant to the provisions of section 290.06, subdivision 2, the standard deduction shall be available to individuals with adjusted gross income of less than $20,000 only through the use of such table.

In the case of a husband and wife living together, the standard deduction shall not be allowed to either if the net income of one of the spouses is determined without regard to the standard deduction. For the purposes of this paragraph the determination of whether an individual is living with his spouse shall be made as of the last day of the taxable year unless the spouse dies during the taxable year in which case such determination shall be made as of the date of such spouse's death.

(b) For each taxable year beginning after December 31, 1980, the maximum amount of the standard deduction shall be adjusted for inflation. That amount shall be multiplied each year by a figure equal to the percentage increase in the revised consumer price index for all urban consumers for the Minneapolis-St. Paul metropolitan area used for purposes of section 290.06, subdivision 3g. The product of the calculation shall be added to the dollar amount of the maximum standard deduction established in clause (a) to produce the inflation-adjusted maximum standard deduction for each succeeding year.

(c) The commissioner of revenue may establish a standard deduction tax table incorporating the rates set forth in section 290.06, subdivision 2c, and the standard deduction. The tax of any individual taxpayer whose adjusted gross income is less than $20,000 shall, if an election is made not to itemize nonbusiness deductions, be computed in accordance with tables prepared and issued by the commissioner of revenue. The tables shall be prepared to reflect the allowance of the standard deduction and the personal and dependent credits.

Subd. 16. **Circulation expenditures.** Notwithstanding the provisions of section 290.10(2), all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business or another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the commissioner, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so charge-

able. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the commissioner permits a revocation of such election subject to such conditions as he deems necessary.

Subd. 17. **Taxes and interest paid to cooperative apartment corporation.** In the case of a tenant-stockholder as defined herein, amounts, not otherwise deductible, paid or accrued to a cooperative apartment corporation within the taxable year, if such amounts represent that proportion of (a) the real estate taxes (allowable as deductions under subdivision 4) paid or incurred by the corporation on the apartment building and the land on which it is situated, and (b) the interest (allowable as a deduction under subdivision 3) paid or incurred by the corporation on its indebtedness contracted in the acquisition, construction, alteration, rehabilitation, or maintenance of such apartment building or in the acquisition of the land on which the building is located, which the stock of the corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation, including that held by the corporation.

As used in this subdivision the term "cooperative apartment corporation" means a corporation

(a) having one and only one class of stock outstanding,

(b) all of the stockholders of which are entitled, solely by reason of their ownership of stock in the corporation, to occupy for dwelling purposes apartments in a building owned or leased by such corporation, and who are not entitled, either conditionally or unconditionally, except upon a complete or partial liquidation of the corporation, to receive any distribution not out of earnings and profits of the corporation, and

(c) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in this subdivision are paid or incurred is derived from tenant-stockholders.

The term "tenant-stockholders" means an individual who is a stockholder in a cooperative apartment corporation, and whose stock is fully paid up in an amount not less than an amount shown to the satisfaction of the commissioner as bearing a reasonable relationship to the portion of the value of the corporation's equity in the building and the land on which it is situated which is attributable to the apartment which such individual is entitled to occupy. For purposes of this subdivision, if a bank or other lending institution acquires by foreclosure, or by instrument in lieu of foreclosure, the stock of a tenant-stockholder, and a lease or the right to occupy an apartment to which the stock is appurtenant, the bank or other lending institution shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition. The preceding sentence shall apply even though, by agreement with the cooperative apartment corporation, the bank or other lending institution, or its nominee, may not occupy the apartment without the prior approval of the corporation.

Subd. 17a. **Stock acquired by original seller in cooperative apartment corporation.** If the original seller acquires any stock of a cooperative apartment corporation (1) from the corporation by purchase, or (2) by foreclosure, or by instrument in lieu of foreclosure, of any purchase-money security interest in stock of the corporation held by the original seller, for purposes of subdivision 17, the original seller shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition. This subdivision shall apply with respect to any acquisition of stock of a cooperative apartment corporation only if, together with such acquisition, the original seller acquires the right to occupy an apartment to which the stock is appurtenant. For purposes of the preceding sentence, there shall not be taken into account the fact that, by agreement with

a cooperative apartment corporation, the original seller or its nominee may not occupy an apartment without the prior approval of the corporation. The term "original seller" means the person or corporation from whom the cooperative apartment corporation has acquired the apartments or leaseholds therein.

Subd. 18. **Research and experimental expenditures.** (a) A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction. A taxpayer may, without the consent of the commissioner, adopt the method provided herein for his first taxable year which begins after December 31, 1954, and for which expenditures described herein are paid or incurred. A taxpayer may, with the consent of the commissioner, adopt at any time the method provided in this paragraph. The method adopted under this paragraph shall apply to all expenditures described herein. The method adopted shall be adhered to in computing net income for the taxable year and for all subsequent taxable years unless, with the approval of the commissioner, a change to a different method is authorized with respect to part or all of such expenditures.

(b) At the election of the taxpayer, made in accordance with regulations prescribed by the commissioner, research or experimental expenditures which are paid or incurred by the taxpayer in connection with his trade or business, not treated as expenses under paragraph (a), and chargeable to capital account but not chargeable to property of a character which is subject to the allowance under subdivision 7 (relating to allowance for depreciation, etc.) or subdivision 8 (relating to allowance for depletion), may be treated as deferred expenses. In computing net income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 290.12, subdivision 2 (relating to adjustments to basis of property). The election provided in this paragraph may be made for any taxable year beginning after December 31, 1954, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing net income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the commissioner, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) This subdivision shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under subdivision 7 (relating to allowance for depreciation, etc.) or subdivision 8 (relating to allowance for depletion); but for purposes of this subdivision allowances under subdivision 7, and allowances under subdivision 8, shall be considered as expenditures.

(d) This subdivision shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

Subd. 19. **Organizational expenditures.** The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the commissioner), be treated as deferred expenses and in computing net income, such deferred expenses shall be allowed as a

deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business). The term "organizational expenditures" means any expenditure which is incident to the creation of the corporation; is chargeable to capital account; and is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life. The election provided herein may be made for any taxable year beginning after December 31, 1954, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The period so elected shall be adhered to in computing the net income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred on or after January 1, 1955.

Subd. 20. [Repealed, 1980 c 419 s 46]

Subd. 21. **Soil and water conservation expenditures.** Expenditures which are paid or incurred during the taxable year by a taxpayer engaged in the business of farming for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, may be treated by him as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction, but the amount deductible for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this subdivision for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

For purposes of this subdivision the term "expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming" means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term does not include the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in subdivision 7, or any amount paid or incurred which is allowable as a deduction without regard to this subdivision.

The term "land used in farming" means land used (before or simultaneously with the expenditures described in the foregoing paragraphs of this subdivision) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

A taxpayer may, without the consent of the commissioner, adopt the method provided in this subdivision for his first taxable year which begins after December 31, 1954, and for which expenditures described in this subdivision are paid or incurred. A taxpayer may, with the consent of the commissioner, adopt at any time the method provided in this subdivision. The method adopted shall apply to all expenditures described in this subdivision. The method adopted shall be adhered to in computing net income for the taxable year and for all subsequent taxable years unless, with the approval of the commissioner, a change to a different method is authorized with respect to part or all of such expenditures.

Subd. 22. **Tuition and transportation expense.** The amount he has paid to others, not to exceed $500 for each dependent in grades K to 6 and $700 for each dependent in grades 7 to 12, for tuition, textbooks and transportation of each dependent in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363. As used in this subdivision, "textbooks" shall mean and include books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and shall not include instructional books and materials used in the teaching of religious tenets, doctrines or worship, the purpose of which is to inculcate such tenets, doctrines or worship, nor shall it include such books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

Subd. 24. **Additional investment credit deductions.** (a) The basis of any property placed in service before January 1, 1964, which base was reduced in accordance with the provisions of Laws 1963, Chapter 236, shall as of the first day of the taxpayer's first taxable year which begins after December 31, 1963, be increased by an amount equal to the reduction permitted under the aforesaid chapter 236.

(b) In the case of property disposed of on or after January 1, 1973, there shall be added to the taxpayer's income, in the year in which the property is disposed of, the amount of any increase in the taxpayer's federal tax liability under section 47 of the Internal Revenue Code of 1954, as amended through December 31, 1979, to the extent of the credit under section 38 of the Internal Revenue Code of 1954, as amended through December 31, 1979 that was previously allowed as a deduction under this section.

Subd. 25. **Exploration and development expenditures.** (a) Expenditures paid or incurred during the taxable year for the purposes of ascertaining the existence, location, extent, or quality of any deposit of copper, nickel or copper-nickel ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit shall be allowed as a deduction in computing taxable income in accordance with and to the extent provided in section 617 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

(b) Expenditures paid or incurred during the taxable year for the development of a copper, nickel or copper-nickel mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed shall be allowed as a deduction in computing taxable income in accordance with and to the extent provided in section 616 of the Internal Revenue Code of 1954, as amended through December 31, 1979. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

Subd. 26. [Repealed, 1977 c 423 art 7 s 3]

Subd. 27. **Adoption expenses.** The expenses he has incurred during the taxable year arising from his adoption of one or more children, including attorney fees, court costs, social or adoption agency fees, and other necessary costs in connection with an adoption; such total expense, however, shall not exceed

$1,250 per child adopted. If under the taxpayer's system of accounting, the expense is deductible in two different taxable years, the total deduction for the two years shall not exceed $1,250 per child.

Subd. 28. **Real estate investment trusts; deductible dividends.** A "real estate investment trust," as defined in section 856 of the Internal Revenue Code of 1954, as amended through December 31, 1979, and to which sections 856 to 860 of the Code apply for the taxable year, may deduct its dividends paid to the extent permitted by section 857(b) (2) (B) of the Code. Such a trust and its shareholders and beneficiaries shall be subject to all of the provisions of sections 857 and 858 of the Code which are applicable under this chapter, in determining their respective taxable net incomes, provided that the amount determined and available for the alternative tax under section 857(b) (3) (A) (ii) of the Code shall be included in gross income subject to the deduction provided by section 290.16, subdivision 4.

Subd. 29. **Deductions attributable to farming.** (a) **Definitions.** For purposes of this subdivision, income and gains and expenses and losses shall be considered as "arising from a farm" if such items are received or incurred in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, and all operations incident thereto, including but not limited to the common use of "hedging".

(b) **Deductions limited.** Except as provided in this subdivision, expenses and losses, except for interest and taxes, arising from a farm shall not be allowed as deductions in excess of income and gains arising from a farm.

(c) **Deductions allowed; carryover deductions.** For taxable years beginning on or after January 1, 1974, expenses and losses arising from a farm or farms shall be allowed as deductions up to the amount of the income and gains arising from a farm or farms in any taxable year, plus the first $15,000 of non-farm gross income, or non-farm taxable net income in the case of a corporation, provided however that in any case where non-farm income exceeds $15,000, the maximum allowable amount of $15,000 shall be reduced by twice the amount by which the non-farm income exceeds the amount of $15,000. Any remaining balance of the deductions shall be carried back three years and carried forward five years, in chronological order, provided, however, that in any case in which the taxpayer elects a net operating loss carryforward under section 172(b)(3)(E) of the Internal Revenue Code of 1954, as amended through December 31, 1979, such losses shall not be carried back but shall only be carried forward.

Current expenses and losses shall be utilized as deductions in any taxable year, to the extent herein allowable, prior to the application of any carryback or carryover deductions. In any event, the combined amounts of such current expenses and losses and carryback or carryover deductions shall be allowed as deductions up to the amount of the income and gains arising from a farm or farms in any taxable year, plus the first $15,000 of non-farm gross income, or non-farm taxable net income in the case of a corporation, provided however that in any case where non-farm income exceeds $15,000, the maximum allowable amount of $15,000 shall be reduced by twice the amount by which the non-farm income exceeds the amount of $15,000.

(d) **Shareholders separate entities.** For purposes of this subdivision, individual shareholders of an electing small business corporation shall be considered separate entities.

(e) **Special period of limitation with respect to farm loss limitation carrybacks.** For the purposes of sections 290.46 and 290.50, if the claim for refund relates to an overpayment attributable to a farm loss limitation carryback under

this subdivision, in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period of limitation shall be that period which ends with the expiration of the 15th day of the 46th month (or the 45th month, in the case of a corporation) following the end of the taxable year of the farm loss which results in the carryback. No deduction or refund shall be allowed on 1974 returns for farm losses which have been previously carried back to earlier years and for which a tax refund or reduction has been allowed.

(f) **Interest on claims.** In any case in which a taxpayer is entitled to a refund in a carryback year due to the carryback of a farm loss, interest shall be computed only from the end of the taxable year in which the loss occurs.

Subd. 30. **Individual housing accounts.** (a) There shall be allowed as a deduction the amount, not to exceed $1,500, paid in cash during the taxable year by an individual taxpayer to an individual housing account established for his benefit to provide funding for the purchase of his first principal residence, together with all interest paid or accrued within the taxable year on the account. In the case of a married couple filing separate returns or filing separately on a combined return, the sum of the deductions allowable, for amounts paid in cash, to each of them for the taxable year may not exceed $1,500. No deduction may be taken for an amount on deposit in the account for less than six months before withdrawal. Any amount deposited less than six months before the close of the taxpayer's taxable year may be taken as a deduction only for the next succeeding taxable year.

The amounts paid in cash allowable as a deduction under this subdivision to an individual for all taxable years may not exceed $10,000. In the case of a married individual, the $10,000 amount shall be reduced by an amount equal to the sum of the amounts paid in cash allowed as deductions pursuant to this subdivision for all taxable years to his spouse.

(b) For purposes of this subdivision, the term "individual housing account" means a trust created or organized in Minnesota for the exclusive benefit of an individual, or, in the case of a married individual, for the exclusive benefit of the individual and his spouse jointly, but only if the written governing instrument creating the trust meets the following requirements:

(1) Contributions will not be accepted for the taxable year in excess of $2,500 or in excess of $10,000 for all taxable years, exclusive of interest paid or accrued.

(2) The trustee is a financial institution, as defined in section 47.015, or a credit union, chartered or supervised under federal or state law, whose accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration or any agency of this state or any federal agency established for the purpose of insuring accounts in these financial institutions. The financial institution must actively make residential real estate mortgage loans in Minnesota.

(3) The assets of the trust shall be invested only in savings or time deposits in amounts fully insured as prescribed in paragraph (2). Funds held in the trust may be commingled for purposes of investment, but individual records shall be maintained by the trustee for each individual housing account holder which show all transactions in detail.

(4) The entire interest of an individual or married couple for whose benefit the trust is maintained will be distributed to him, or them, not later than 120 months after the date on which the first contribution is made to the trust.

(5) Except as provided in clause (c)(2) or clause (d) in the case of a disability or death the trustee will distribute no part of the funds in the account unless it: (a) verifies that the money is to be used for the purchase of a residence located in Minnesota, and it provides that the instrument of payment is

payable to the mortgagor, construction contractor, or other vendor of the property purchased; or (b) withholds an amount equal to ten percent of the amount withdrawn from the account and remits this amount to the commissioner of revenue within ten days after the date of the withdrawal. The amount so withheld shall be applied to the liability of the taxpayer under clauses (c)(1) and (d).

(c) (1) Except as otherwise provided in this clause, any amount paid or distributed out of an individual housing account shall be included in gross income by the payee or distributee for the taxable year in which the payment or distribution is received, unless the amount is used exclusively in connection with the first purchase of a principal residence in Minnesota for the payee or distributee.

(2) Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to an individual housing account to the extent that the contribution exceeds the amount allowable as a deduction under this subdivision if:

(A) The distribution is received on or before the day prescribed by law including extensions of time for filing such individual's return for the taxable year;

(B) No deduction is allowed under this subdivision with respect to the excess contribution; and

(C) The distribution is accompanied by the amount of net income attributable to the excess contribution. This net income shall be included in the gross income of the individual for the taxable year in which it is received.

(3) Paragraph (1) shall not apply to the distribution of any contribution paid during any taxable year to an individual housing account to the extent that the contribution exceeds the amount allowable as a deduction under this subdivision and no deduction was allowed under this subdivision with respect to the excess contribution.

(4) The transfer of an individual's interest in an individual housing account to his former spouse under a dissolution of marriage decree or under a written instrument incident to a dissolution of marriage is not to be considered a taxable transfer made by the individual and the interest, at the time of the transfer, is to be treated as an individual housing account of the transferee, and not of the transferor. After the transfer, the account is to be treated, for purposes of this subdivision, as maintained for the benefit of the spouse.

(d) If a distribution from an individual housing account to an individual for whose benefit the account was established is made and not used in connection with the first purchase of a principal residence in Minnesota for the individual, the tax liability of the individual under this chapter for the taxable year in which the distribution is received shall be increased by an amount equal to ten percent of the amount of the distribution which is includable in his gross income for the taxable year. If, during any taxable year, the individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual. No such liability shall be imposed if the payment or distribution is attributable to the taxpayer dying or becoming disabled as provided in section 290A.03, subdivision 10. An individual shall not be considered to be disabled unless he furnishes proof of the disability in the form and manner as the commissioner of revenue may require. Upon the death of an individual for whose benefit the account had been established, the funds in the account shall be payable to the estate of the individual, provided that, if the account was held jointly by the decedent and a spouse of the decedent, the account shall remain as the individual housing account of the surviving spouse.

(e) The trustee of an individual housing account shall make reports regarding the account to the commissioner of revenue and to the individual for whom

the account is maintained with respect to contributions, distributions, and other matters as the commissioner may require under rules. The reports required by this clause shall be filed at a time and in a manner as may be required by the rules. A person who fails to file a required report will be subject to a penalty of $10 to be paid to the commissioner of revenue for each instance of failure to file.

(f) For purposes of this clause, in the case of an individual housing account, the term "excess contributions" means the amount by which the amount contributed for the taxable year to the account exceeds the amount allowable as a contribution under clause (b)(1) for the taxable year. For purposes of this clause, any contribution which is distributed out of the individual housing account and a distribution to which clause (c)(2) applies shall be treated as an amount not contributed.

In addition to the tax liability of the individual under this chapter for the taxable year, there is imposed for each taxable year a tax not to exceed six percent of the value of the amount of the excess contributions to an individual's individual housing account.

This subdivision may be cited as the "Young Family Housing Act".

History: *1933 c 405 s 13; Ex1937 c 49 s 8,9; 1941 c 550 s 7; 1943 c 656 s 6-8,24,25; 1945 c 604 s 7; 1949 c 734 s 7; 1951 c 421 s 1; 1951 c 679 s 1; 1953 c 667 s 3; 1955 c 29 s 1; 1955 c 31 s 1; 1955 c 85 s 1; 1955 c 90 s 1; 1955 c 94 s 1; 1955 c 192 s 1; 1955 c 420 s 1; 1955 c 428 s 1; 1955 c 692 s 1; 1955 c 741 s 1,2; 1955 c 775 s 2; Ex1959 c 70 art 3 s 7; Ex1959 c 70 art 11 s 1; 1961 c 213 art 4 s 3; 1961 c 501 s 3; 1961 c 502 s 1; 1963 c 355 s 2,4; 1963 c 880 s 1; 1965 c 341 s 1; 1965 c 365 s 1; 1965 c 802 s 1; 1967 c 671 s 3,4; 1967 c 899 s 1; 1967 c 901 s 2; Ex1967 c 32 art 6 s 18; 1969 c 84 s 1; 1969 c 343 s 1; 1969 c 575 s 3; 1971 c 769 s 2; Ex1971 c 31 art 6 s 6; Ex1971 c 31 art 11 s 1; 1973 c 446 s 1; 1973 c 711 s 2,3; 1973 c 737 s 2; 1975 c 284 s 47; 1975 c 349 s 14,15,29; 1975 c 437 art 5 s 1; 1976 c 2 s 105; 1976 c 37 s 1; 1977 c 247 s 4; 1977 c 376 s 4,5,13; 1977 c 386 s 3,4; 1977 c 423 art 1 s 8-10; 1978 c 674 s 31,60; 1978 c 766 s 3; 1978 c 772 s 62; 1979 c 265 s 3; 1979 c 303 art 1 s 12,14; 1980 c 419 s 10-12; 1980 c 512 s 5,7; 1980 c 562 s 3,4; 1980 c 607 art 1 s 10-14,32 (2394-13)*

NOTE: Laws 1980, Chapter 587, Article 1, Section 37, amends subdivision 2 effective upon the ratification of the constitutional amendment proposed in Laws 1980, Chapter 587, Article 1, Section 1 and shall expire January 1, 1985. See Laws 1980, Chapter 587, Article 1, Section 41. The subdivision, as amended, would read as follows:

"Subd. 2. **Trade or business expenses; expenses for production of income.** (a) In General. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) Traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and

(3) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity. For purposes of the preceding sentence, the place of residence of a member of congress within the state shall be considered his home, but amounts expended by such members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

(b) Expenses for Production of Income. In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year.

(1) For the production or collection of income;

(2) For the management, conservation, or maintenance of property held for the production of income; or

(3) In connection with the determination, collection, or refund of any tax.

(c) Campaign expenditures in an amount not to exceed the limits set out in section 210A.22, not subsequently reimbursed, which have been personally paid by a candidate for public office if the candidate has complied with the expenditure limitations set out in section 210A.22:

(No deduction shall be allowed under this clause for 6ny contribution or gift which would be allowable as a credit under section 290.21 were it not for the percentage limitations set forth in such section);

(d) All expense money paid by the legislature to legislators;

(e) The provisions of section 280A (disallowing certain expenses in connection with the business use of the home and rental of vacation homes) of the Internal Revenue Code of 1954, as amended through December 31, 1976, shall be applicable in determining the availability of any deduction under this subdivision.

(f) No deduction shall be allowed under this subdivision to a corporation for expenditures to promote or defeat the certification of an initiative or referendum proposal or the passage of an initiative or referendum measure which has qualified for the general election ballot, including a proposal or measure which materially affects the property, business, or assets of a corporation; nor shall a deduction be allowed to a corporation for contributions or payments made to an individual, organization, association, corporation, or

committee any part of whose activities include efforts to promote or defeat the certification of an initiative or referendum proposal or the passage of an initiative or referendum measure which has qualified for the general election ballot, including a proposal or measure which materially affects the property, business, or assets of a corporation."

290.091 MINIMUM TAX ON PREFERENCE ITEMS.

(a) In addition to all other taxes imposed by this chapter there is hereby imposed, a tax which, in the case of a resident individual, estate or trust, shall be equal to 40 percent of the amount of the taxpayer's minimum tax liability for tax preference items pursuant to the provisions of sections 55 to 58 and 443(d) of the Internal Revenue Code of 1954 as amended through December 31, 1979 except that for purposes of the tax imposed by this section, excess itemized deductions as defined in section 57(b) shall not include any deduction taken for Minnesota income tax paid and capital gain as defined in section 57(a) of the Internal Revenue Code shall not include that portion of any gain occasioned by sale, transfer or the granting of a perpetual easement pursuant to any eminent domain proceeding or threat thereof as described in section 290.13, subdivision 5. This modification shall apply to the years in which the gain or reduction in loss is actually included in federal adjusted gross income even though amounts received pursuant to the eminent domain proceedings were received in prior years. In the case of a taxpayer other than a corporation, an amount equal to one-half of the net capital gain for the taxable year shall be used as the definition of capital gain in place of the deduction determined under section 1202 of the Internal Revenue Code. In the case of a resident individual, estate or trust having preference items which could not be taken to reduce income from sources outside the state pursuant to section 290.17, subdivision 1, or any other taxpayer the tax shall equal 40 percent of that federal liability, multiplied by a fraction the numerator of which is the amount of the taxpayer's preference item income allocated to this state pursuant to the provisions of sections 290.17, subdivision 1, to 290.20, and the denominator of which is the taxpayer's total preference item income for federal purposes.

(b) In the case of a resident individual, estate or trust having preference items in taxable years beginning after December 31, 1976, and before January 1, 1978, which are not allocable to Minnesota under the provisions of sections 290.17 to 290.20 in effect for such years, the tax shall equal 40 percent of the taxpayer's federal minimum tax liability, multiplied by a fraction the numerator of which is the amount of the taxpayer's preference items allocable to Minnesota under the provisions of sections 290.17 to 290.20 in effect for those years and the denominator of which is the taxpayer's total preference items for federal purposes.

History: *1977 c 423 art 1 s 14; 1978 c 767 s 17; 1979 c 303 art 1 s 15; 1980 c 607 art 1 s 15*

290.095 OPERATING LOSS DEDUCTION.

Subdivision 1. **Allowance of deduction.** (a) There shall be allowed as a deduction for the taxable year the amount of any net operating loss deduction as defined in subdivision 2, clause (b); provided, however, that the modifications specified in subdivision 4 shall be made in computing the taxable net income for the taxable year before the net operating loss deduction shall be allowed.

(b) A net operating loss deduction shall be available under this section only to corporate taxpayers except as provided in subdivisions 6, 7 and 9 hereof, and, with respect to individuals, no deduction shall be allowed for or with respect to losses which constitute tax preference items as set forth in section 290.17, subdivision 1.

Subd. 2. **Defined and limited.** (a) The term "net operating loss" as used in this section shall mean the excess of the deductions of the kind provided for in section 290.09, permitted to be taken in computing a taxpayer's taxable net

income, as that term is defined in section 290.01, subdivision 22, over the gross income used in computing such taxable net income, with the modifications specified in subdivision 4.

(b) The term "net operating loss deduction" as used in this section means the aggregate of the net operating loss carrybacks and carryovers to the taxable year, computed in accordance with subdivision 3.

Subd. 3. **Carryover and carryback.** (a) Except as provided in subdivision 8, a net operating loss for any taxable year shall be:

(1) A net operating loss carryback to each of the three taxable years preceding the taxable year of such loss, and

(2) A net operating loss carryover to each of the five taxable years following the taxable year of such loss.

(b) The entire amount of the net operating loss for any taxable year shall be carried to the earliest of the taxable years to which, by reason of subdivision 3, clause (a), such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable net income, adjusted by the modifications specified in subdivision 4, for each of the prior taxable years to which such loss may be carried.

(c) Where a corporation does business both within and without Minnesota, and apportions its income under the provisions of section 290.19, the net operating loss deduction shall be allowed to the extent of the apportionment ratio of the loss year, or the year to which the loss is carried, whichever is smaller.

Subd. 4. **Computation and modifications.** The following modifications shall be made in computing a net operating loss in any taxable year and also in computing the taxable net income for any taxable year before a net operating loss deduction shall be allowed:

(a) Deductions otherwise allowable in computing taxable net income, but which are not attributable to the operation of a trade or business regularly carried on by the taxpayer, shall be allowed only to the extent of the amount of the gross income, not derived from such trade or business, included in computing such taxpayer's taxable net income.

(b) There shall be included in computing the gross income used in computing taxable net income the amount of the interest, excludable from gross income under section 290.08, that would be treated as assignable to this state, decreased by the amount of interest paid or accrued to purchase or carry the investments earning such interest to the extent that such interest would not have been deductible in computing the taxpayer's taxable net income.

(c) No deduction shall be allowed for or with respect to losses connected with income producing activities if the income therefrom would not be required to be either assignable to this state or included in computing the taxpayer's taxable net income.

(d) A net operating loss deduction shall not be allowed.

(e) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets. The deduction for long-term capital gains provided by section 290.16, subdivision 4, shall not be allowed.

(f) Renegotiation of profits for a prior taxable year under the renegotiation laws of the United States of America, including renegotiation of the profits with a subcontractor, shall not enter into the computation.

(g) Federal income and excess profits taxes shall not be allowed as a deduction.

Subd. 5. **Return covering less than 12 months.** Wherever, under the provisions of this chapter, any taxpayer is required or permitted to make a return for a period of less than 12 months, such period shall be deemed a taxable year in the application of the provisions of this section.

Subd. 6. [Repealed, 1980 c 419 s 46]

Subd. 7. **Tentative carryback adjustments.** (a) Application for adjustment. A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback, provided for by subdivision 2, from any taxable year. The application shall be duly acknowledged and shall be filed on or after the date of filing of the return for the taxable year of the net operating loss from which the carryback results and within a period of 12 months from the end of such taxable year, in the manner and form required by regulations prescribed by the commissioner. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require:

(1) The amount of the net operating loss;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback;

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax;

(5) Such other information for purposes of carrying out the provisions of this subdivision as may be required by such regulations.

An application under this subdivision shall not constitute a claim for credit or refund.

(b) Allowance of adjustments. Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which such carryback results, whichever is the later, the commissioner shall make, to the extent he deems practicable in such period a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the commissioner may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of tax decreased and any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

Subd. 8. **Foreign expropriation loss.** (a) For the purpose of this chapter, the term "foreign expropriation loss" means, for any taxable year, the sum of the losses sustained by reason of the expropriation, intervention, seizure or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For the purpose of the preceding sentence, a debt which becomes worthless shall, to the extent of any deduction allowed under section 290.09, subdivision 6, be treated as a loss.

The portion of the net operating loss for any taxable year attributable to a foreign expropriation loss is the amount of the foreign expropriation loss for such year (but not in excess of the net operating loss for such year).

(b) In the case of a taxpayer who has a foreign expropriation loss (as defined in (a)) a portion of the net operating loss shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss and shall be a net operating loss carryover to each of the ten taxable years following the taxable year of such loss. This paragraph shall apply only if (1) the foreign expropriation loss (as defined in (a)) for the taxable year equals or exceeds 50 percent of the net operating loss for the taxable year, and (2) in the case of a foreign expropriation loss the taxpayer elects (at such time and in such manner as the commissioner by regulation prescribes) to have (a) apply.

(c) In determining the amount of any carryback or carryover of a net operating loss, the amount of the net operating loss deduction for any taxable year shall be determined without regard to that portion of a net operating loss which, under (b) above, may not be carried back to a prior taxable year and if a portion of a net operating loss for the loss year is attributable to a foreign expropriation loss, to which (b) applies, such portion shall be considered as a separate net operating loss for such year to be applied after the other portion of such net operating loss.

Subd. 9. **Special period of limitation with respect to net operating loss carrybacks.** For the purposes of sections 290.46 and 290.50 if the claim for refund relates to an overpayment attributable to a net operating loss carryback under this section or as the result in the case of an individual of an adjustment of "federal adjusted gross income" because of the carryback under section 172 of the Internal Revenue Code of 1954, as amended through December 31, 1979 in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period shall be that period which ends with the expiration of the 15th day of the 46th month (or the 45th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback or adjustment of "federal adjusted gross income".

Subd. 10. **Product liability loss carryback.** In the case of a taxpayer which has a product liability loss, as defined in section 172(i) of the Internal Revenue Code of 1954 as amended through December 31, 1979, for a taxable year beginning after September 30, 1979 (referred to as "loss year"), the product liability loss shall be a net operating loss carryback to each of the ten taxable years preceding the loss year.

History: *1945 c 604 s 28; 1957 c 769 s 2; Ex1957 c 1 art 6 s 2; Ex1959 c 70 art 3 s 8; 1961 c 259 s 1,2; 1963 c 355 s 5-7; 1965 c 402 s 1,2; 1967 c 597 s 1-3; 1971 c 769 s 2; 1973 c 74 s 1-4; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1979 c 303 art 1 s 16; 1980 c 419 s 13,14; 1980 c 607 art 1 s 16,17,32*

290.10 NONDEDUCTIBLE ITEMS.

In computing the net income no deduction shall in any case be allowed for:

(1) Personal, living or family expenses;

(2) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except as otherwise provided in this chapter;

(3) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(4) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;

(5) The shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance;

(6) Losses from sales or exchanges of property, directly or indirectly, between members of a family, or, except in the case of distributions in liquida-

tion, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 percent in value of the outstanding stock; or between any person or corporation and a trust created by him or it or of which he or it is a beneficiary, directly or indirectly; for the purpose of this clause, an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestor, and lineal descendants, but such losses shall be allowed as deductions if the taxpayer shows to the satisfaction of the commissioner that the sale or exchange was bona fide and for a fair and adequate consideration;

(7) In computing net income, no deduction shall be allowed under section 290.09, subdivision 2, relating to expenses incurred or under section 290.09, subdivision 3, relating to interest accrued;

(a) If such expenses or interest not paid within the taxable year or within two and one-half months after the close thereof; and

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

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

(8) Contributions by employees under the federal railroad retirement act, the federal social security act, or to Minnesota or federal public employee retirement funds, and that the amount of taxes imposed on self-employment income under section 1401 of the Internal Revenue Code of 1954, as amended through December 31, 1979, which would have been imposed on the same amount of income if such income had been treated as wages from employment and subject to tax under the provisions of section 3101 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

(9) Expenses, interest and taxes connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this act. When the federal income tax liability is joint and several under a joint federal return of husband and wife, the allowable federal income tax paid on the income included in the joint federal return may be taken as a deduction from gross income by the spouse who paid the federal income tax.

(10) In situations where this chapter provides for an exclusion from gross income of a specific dollar amount of an item of income assignable to this state, and within the measure of the tax imposed by this chapter, that portion of the federal income tax paid upon such income excluded, and any expenses attributable to earning such income, shall not be deductible in computing net income.

(11) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the commissioner, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

History: *1933 c 405 s 14; Ex1937 c 49 s 11; 1939 c 446 s 7; 1941 c 550 s 8; 1947 c 635 s 7; 1949 c 541 s 2; 1955 c 83 s 1; 1961 c 504 s 1; 1969 c 610 s 1; 1971 c 432 s 1; 1971 c 769 s 2; 1973 c 279 s 1; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32 (2394-14)*

290.101 DENIAL OF DEDUCTIONS RELATING TO SUBSTANDARD BUILDINGS.

Subdivision 1. No taxpayer who receives or has received rental income from a substandard building located in this state is allowed a deduction for interest and depreciation authorized under sections 290.09 or 290.01, subdivision 20 which relate to that substandard building other than buildings used for agricultural purposes or owner-occupied buildings with four dwelling units or less.

Subd. 2. Substandard building means a building which:

(a) Has been determined, by a state, county, or city agency, charged by the governing body of the appropriate political subdivision with the responsibility for enforcing health, housing, building, fire prevention, or housing maintenance codes, to materially endanger the health and safety of the occupants or, if unoccupied, is a hazardous building within the meaning of section 463.15, subdivision 3; and

(b) After written notice by the agency to the owner, which (1) contains the particulars of the violation; (2) informs the owner of where an appeal may be filed; and (3) contains a general description of the tax consequences, if the violations are not corrected, has not been repaired or brought to a condition of compliance within six months after the date of the notice or within the time prescribed by the agency in the notice in accordance with applicable state law or local ordinance, whichever period is shortest, or on which good faith efforts for compliance as determined by the agency have not commenced. The agency may, if statute or ordinance so authorizes, extend the compliance date prescribed in the violation notice, for good cause shown.

Subd. 3. The agency shall also, at the time of written notice of violation to the owner pursuant to subdivision 2, inform the owner of federal, state, or local public or private housing rehabilitation programs including but not limited to the Minnesota housing finance agency rehabilitation loan and grant program, authorized pursuant to chapter 462A, and shall also refer owners to such programs.

Subd. 4. When the period specified in subdivision 2 has expired without compliance the agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in the form and shall contain the particulars of the noncompliance and shall include the information, as may be prescribed by the commissioner, shall be mailed by certified mail, return receipt requested, to the taxpayer at his last known address, and shall advise the taxpayer:

(a) Of an intent to notify the commissioner of noncompliance;

(b) Where an appeal may be filed; and

(c) A general description of the tax consequences of the filing with the commissioner and a general description of the tax consequences if the taxpayer should prevail on appeal. Appeals shall be made to the same body and in the same manner as appeals from other actions of the agency as authorized by statute or ordinance, including but not limited to an appeal to the county or municipal court of the county in which the building is located, concerning the violation and determination of material endangerment or hazard made pursuant to subdivision 2. No deduction shall be allowed for items provided in subdivision 1 from the date of the notice of noncompliance until the date the agency determines that the substandard building has been brought to a condition of compliance. The agency shall mail to the taxpayer a notice of compliance, which notice shall be in the form and include the information as may be prescribed by the commissioner. In the event the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of one-twelfth for each full month during the period of noncompliance.

Subd. 5. On or before March 15 of each year, the agency shall notify the commissioner of revenue of all cases of noncompliance in the previous year, and

other information which is necessary for the commissioner to carry out his responsibilities as set forth in subdivision 9, on a form prescribed by the commissioner. The notice shall be in the form and include the information as may be prescribed by the commissioner.

Subd. 6. If the taxpayer is sustained upon appeal, the agency shall notify the taxpayer concerning the procedures for the filing of a refund. The notice shall be in the form and include such information as may be prescribed by the commissioner. The taxpayer may then file for a refund as provided for by law.

Subd. 7. For purposes of this section, a notice of noncompliance shall not be mailed by an agency to the commissioner if the building was rendered substandard solely by reason of tornado, flood, or other natural disaster.

Subd. 8. A notice of noncompliance shall not be mailed by the agency to the taxpayer until after the time the state or the governing body of the appropriate political subdivision has prescribed by statute or ordinance the nature and types of violations of codes referred to in subdivision 2, which would constitute a material endangerment to the health and safety of occupants of buildings or which would constitute a hazardous building within the meaning of section 463.15, subdivision 3.

Subd. 9. On or before March 15 of each year, the commissioner of revenue shall report to the tax committees of both houses of the legislature information indicating: (a) the number of written notices of violations issued by the agency pursuant to subdivision 2; (b) the number and types of substandard buildings found to be in noncompliance under Laws 1975, Chapter 226 and the average time of such noncompliance; (c) the number and types of buildings brought into a condition of compliance under Laws 1975, Chapter 226; (d) a description of the types of violations found to endanger the health and safety of occupants under Laws 1975, Chapter 226; and (e) the number and types of buildings abandoned, destroyed or no longer used for rental purposes after the service of a notice of noncompliance pursuant to subdivision 4.

History: *1975 c 226 s 1*

NOTE: This section is effective for taxable years commencing after December 31, 1975 and shall, unless reenacted, expire after the taxable year ending December 31, 1981. See Laws 1975, Chapter 226, Section 4, as amended by Laws 1979, Chapter 311, Section 1.

290.11 DETERMINATION OF INCOME, INVENTORIES.

When in the opinion of the commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business involved and as most clearly reflecting the income.

History: *1933 c 405 s 15 (2394-15)*

290.12 GAIN OR LOSS ON DISPOSITION OF PROPERTY, COMPUTATION.

Subdivision 1. **Measurement.** The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in sections 290.14 and 290.15 and the loss shall be the excess of such basis over the amount realized, except that such basis shall, in the case of both gain and loss, be adjusted as provided in subdivision 2.

Subd. 2. **Adjustments.** In computing the amount of gain or loss under subdivision 1 proper adjustment shall be made for any expenditure, receipt, loss, or other item properly chargeable to capital account by the taxpayer during his ownership thereof, and for the gain or any part thereof realized from the sale, exchange or involuntary conversion of a residence where, by reason of the provisions of section 290.13, such gain or any part thereof is not recognized. The

basis shall be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization, depletion, and the allowance for amortization of bond premium if an election to amortize was made in accordance with section 290.09, subdivision 13, which could, during the period of his ownership thereof, have been deducted by the taxpayer under this chapter in respect of such property. The basis shall also be diminished by the amount of depreciation relating to a substandard building disallowed by section 290.101. In addition, if the property was acquired before January 1, 1933, the basis, if other than the fair market value as of such date, shall be diminished by the amount of exhaustion, wear and tear, obsolescence, amortization, or depletion actually sustained before such date. In respect of any period since December 31, 1932, during which property was held by a person or an organization not subject to income taxation under this act, proper adjustment shall be made for exhaustion, wear and tear, obsolescence, amortization, and depletion of such property to the extent sustained. For the purpose of determining the amount of these adjustments the taxpayer who sells or otherwise disposes of property acquired by gift shall be treated as the owner thereof from the time it was acquired by the last preceding owner who did not acquire it by gift, and the taxpayer who sells or otherwise disposes of property acquired by gift through an inter vivos transfer in trust shall be treated as the owner from the time it was acquired by the grantor. The adjustments in case of a sale or other disposition of property received in a transaction of the kind specified in section 290.13, subdivision 1, and in the case of a transaction referred to in section 290.14, clause (6), shall include those which the taxpayer should have been required to make were he selling or otherwise disposing of the property exchanged, or sold, in any such transaction.

No adjustment shall be made:

(1) for taxes or other carrying charges described in section 290.10(10), or

(2) for expenditures described in section 290.09, subdivision 16 (relating to circulation expenditures), for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior years.

Subd. 3. **Amount realized.** The amount realized from the sale or other disposition of property shall be the sum of any money received, plus the fair market value of the property, other than money, received.

Subd. 4. **Gift, devise, bequest, etc.** The disposition of property by gift, devise, bequest, or inheritance, and the passing of property from a decedent to his estate, shall be treated as dispositions from which neither gain nor loss arises for the purposes of this chapter.

History: *1933 c 405 s 16; 1945 c 604 s 9; 1953 c 141 s 1; 1955 c 195 s 1; 1957 c 621 s 11; 1961 c 501 s 4; 1961 c 504 s 2; 1965 c 51 s 59; 1975 c 226 s 3*

290.13 GAIN OR LOSS ON DISPOSITION OF PROPERTY, RECOGNITION.

Subdivision 1. **Transactions in which no gain or loss is recognized.** No gain or loss from the following transactions shall be recognized at the time of their occurrence, except as otherwise specified in this section:

(1) If the property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment;

(2) If common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation;

Subd. 2. **Certain gains recognized.** If an exchange would be within the provisions of subdivision 1, if it were not for the fact that the property received in exchange consists not only of property permitted by any such clause to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property;

Subd. 3. [Repealed, 1957 c 621 s 16]

Subd. 4. **Nonrecognition of loss.** If an exchange would be within the provisions of subdivision 1, if it were not for the fact that the property received in exchange consists not only of property permitted by any such clause to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

Subd. 5. **Conversion of property.** If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted

(1) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Into money, and the disposition of the converted property occurred before January 1, 1955, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the commissioner, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For purposes of this paragraph and paragraph (3), the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation. For purposes of this paragraph and paragraph (3), the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(3) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1954, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the commissioner may by regulations prescribe. For purposes of this paragraph

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of the last paragraph of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 290.14.

(B) The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending

(i) one year after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the commissioner, at the close of such later date as the commissioner may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the commissioner may by regulations prescribe.

(C) If a taxpayer has made the election provided in subparagraph (A), then the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of three and one-half years from the date the commissioner is notified by the taxpayer (in such manner as the commissioner may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, notwithstanding the provisions of section 290.49 or the provisions of any other law or rule which would otherwise prevent such assessment.

(D) If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 290.49 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

The preceding paragraphs shall not apply, in the case of property used by the taxpayer as his principal residence, if the destruction, theft, seizure, requisition, or condemnation of the residence, or the sale or exchange of such residence under threat or imminence, thereof, occurred after December 31, 1950, and before January 1, 1955.

If the property was acquired, after January 1, 1933, as the result of a compulsory or involuntary conversion described in paragraphs (1) or (2), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This paragraph shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1955. In the case of property purchased by the taxpayer in a transaction described in paragraph (3) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property

purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

Subd. 5a. **Gain or loss from sale or exchange to effectuate policies of F.C.C.** If the sale or exchange of property, including stock in a corporation, is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by the commission with respect to the ownership and control of radio broadcasting stations, the sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of the property within the meaning of subdivision 5. For purposes of this subdivision, "radio broadcasting" includes telecasting.

For purposes of subdivision 5 as made applicable by the provisions of this subdivision, stock of a corporation operating a radio broadcasting station located in Minnesota, whether or not representing control of the corporation, shall be treated as property similar or related in service or use to the property so converted. The part of the gain, if any, on the sale or exchange to which subdivision 5 is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss on sale or exchange of property of a character subject to the allowance for depreciation under section 290.09, subdivision 7, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year and with its situs in the state of Minnesota. The manner and amount of the reduction shall be determined under regulations prescribed by the commissioner. Any election made by the taxpayer under this subdivision shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place, and the election shall be binding for that taxable year and all subsequent taxable years.

The basis of property acquired on a sale or exchange treated as an involuntary conversion under this subdivision shall be determined pursuant to the provisions of subdivision 5.

Subd. 6. [Repealed, 1957 c 621 s 16]

Subd. 7. [Repealed, 1957 c 621 s 16]

Subd. 8. [Repealed, 1957 c 621 s 16]

Subd. 9. [Repealed, 1977 c 376 s 14]

Subd. 10. **Exchange of life insurance, endowment or annuity contracts.** (1) No gain or loss shall be recognized on the exchange of a contract of life insurance for another contract of life insurance or for an endowment or annuity contract; or a contract of endowment insurance for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or for an annuity contract; or an annuity contract for an annuity contract.

(2) For the purpose of this subdivision, a contract of endowment insurance is a contract with a life insurance company which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life. An annuity contract is a contract with a life insurance company which depends in part on the life expectancy of the insured, but which may be payable during the life of the annuitant only in installments. A contract of life insurance is a contract with a life insurance company which depends in part on the life expectancy of the insured, but which is not ordinarily payable in full during the life of the insured.

History: *1933 c 405 s 17; Ex1937 c 49 s 12; 1945 c 596 s 3; 1951 c 267 s 1; 1953 c 141 s 2; 1955 c 165 s 1; 1955 c 411 s 1; 1955 c 427 s 1; 1957 c 621 s 12-14,16; 1961 c 501 s 5; 1971 c 512 s 1; 1980 c 607 art 1 s 18 (2394-17)*

290.131 DISTRIBUTIONS BY CORPORATIONS; EFFECTS ON RECIPIENTS.

Subdivision 1. **Distributions of property.** (a) Except as otherwise provided in this chapter, a distribution of property (as defined in section 290.133, subdivision 2, clause (a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in clause (c).

(b) Amount distributed:

(1) For purposes of this subdivision, the amount of any distribution shall be:

(A) If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

(B) If the shareholder is a corporation, the amount of money received, plus whichever of the following is the lesser:

(i) the fair market value of the other property received; or

(ii) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under clause (b) or (c) of section 290.132, subdivision 1.

(2) The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by:

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) For purposes of this subdivision, fair market value shall be determined as of the date of the distribution.

(c) In the case of a distribution to which clause (a) applies:

(1) That portion of the distribution which is a dividend (as defined in section 290.133, subdivision 1) shall be included in gross income.

(2) That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis.

(A) Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that is out of increase in value accrued before January 1, 1933, shall be exempt from tax.

(d) The basis of property received in a distribution to which clause (a) applies shall be:

(1) If the shareholder is not a corporation, the fair market value of such property.

(2) If the shareholder is a corporation, whichever of the following is the lesser:

(A) the fair market value of such property; or

(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under clause (b) or (c) of section 290.132, subdivision 1.

Subd. 2. **Distributions in redemption of stock.** (a) If a corporation redeems its stock (within the meaning of section 290.133, subdivision 2(b)), and if paragraph (1), (2), (3), or (4) of clause (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) (1) Clause (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) Substantially disproportionate redemption of stock.

(A) Clause (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) For purposes of this paragraph, the distribution is substantially disproportionate if:

(i) the ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time, is less than 80 percent of;

(ii) the ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time. For purposes of this paragraph, no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) Clause (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) Clause (a) shall apply if the redemption is of stock issued by a railroad corporation (as defined in section 77(m) of the bankruptcy act, as amended) pursuant to a plan of reorganization under section 77 of the bankruptcy act.

(5) In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of clause (c) (2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the ten year period beginning on the date of the distribution shall not apply.

(c) (1) Except as provided in paragraph (2) of this clause, section 290.133, subdivision 3(a) shall apply in determining the ownership of stock for purposes of this subdivision.

(2) (A) In the case of a distribution described in clause (b) (3), section 290.133, subdivision 3(a) (1) shall not apply if:

(i) immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director or employee), other than an interest as a creditor,

(ii) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within ten years from the date of such distribution, and

(iii) the distributee, at such time and in such manner as the commissioner by regulations prescribes, files an agreement to notify the commissioner of any acquisition described in (ii) and to retain such records as may be necessary for the application of this paragraph. If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within ten years from the date of the distribution, then the periods of limitation provided in sections 290.46 and 290.49 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the commissioner) notifies the commissioner of such acquisitions and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) any portion of the stock redeemed was acquired, directly or indirectly, within the ten year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 290.133, subdivision 3(a), or

(ii) any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 290.133, subdivision 3(a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the ten year period ending on the date of the distributions, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of state income tax.

(d) Except as otherwise provided in sections 290.131 to 290.138, if a corporation redeems its stock (within the meaning of section 290.133, subdivision 2(b)), and if clause (a) of this subdivision does not apply, such redemption shall be treated as a distribution of property to which subdivision 1 of this section applies.

Subd. 3. **Distributions in redemption of stock to pay death taxes.** (a) A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of:

(1) the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) the amount of funeral and administration expenses allowable as deductions to the estate under section 2053 of the Internal Revenue Code of 1954, as amended through December 31, 1979 (or under section 2106 of the Internal Revenue Code of 1954, as amended through December 31, 1979 in the case of the estate of a decedent nonresident, not a citizen of the United States), shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) (1) Clause (a) shall apply only to amounts distributed after the death of the decedent and:

(A) within the period of limitations provided in section 6501(a) of the Internal Revenue Code of 1954, as amended through December 31, 1979 for the assessment of the federal estate tax (determined without the application of any provision other than section 6501(a) of the Internal Revenue Code of 1954, as

amended through December 31, 1979), or within 90 days after the expiration of such period, or

(B) if a petition for redetermination of a deficiency in such estate tax has been filed with the tax court within the time prescribed in section 6213 of the Internal Revenue Code of 1954, as amended through December 31, 1979, at any time before the expiration of 60 days after the decision of the tax court becomes final.

(2) (A) Clause (a) shall apply to a distribution by a corporation only if the value (for federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate is either:

(i) more than 35 percent of the value of the gross estate of such decedent, or

(ii) more than 50 percent of the taxable estate of such decedent.

(B) For purposes of the 35 percent and 50 percent requirements of subparagraph (A), stock of two or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate more than 75 percent in value of the outstanding stock, shall be treated as the stock of a single corporation. For the purpose of the 75 percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(c) (1) a shareholder owns stock of a corporation (referred to in this clause as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this clause as "old stock").

(2) the old stock was included (for federal estate tax purposes) in determining the gross estate of a decedent, and

(3) clause (a) would apply to a distribution of property to such shareholder in redemption of the old stock, then, subject to the limitation specified in clause (b) (1), clause (a) shall apply in respect of a distribution in redemption of the new stock.

Subd. 4. **Redemption through use of related corporations.** (a) (1) For purposes of subdivisions 2 and 3, if:

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control, then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. In any such case, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.

(2) For purposes of subdivisions 2 and 3, if:

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation, then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) (1) Rule for determinations under subdivision 2(b). In the case of any acquisition of stock to which clause (a) of this subdivision applies, determinations as to whether the acquisition is, by reason of subdivision 2(b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section

290.133, subdivision 3(a) relating to constructive ownership of stock with respect to subdivision 2(b) for purposes of this paragraph, section 290.133, subdivision 3(a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

(2) (A) In the case of any acquisition of stock to which paragraph (1) and not paragraph (2) of clause (a) of this subdivision applies, the determination of the amount which is a dividend shall be made solely by reference to the earnings and profits of the acquiring corporation.

(B) In the case of any acquisition of stock to which clause (a) (2) of this subdivision applies, the determination of the amount which is a dividend shall be made as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

(c) (1) For purposes of this subdivision, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) Section 290.133, subdivision 3(a) (relating to the constructive ownership of stock) shall apply for purposes of determining control under paragraph (1). For purposes of the preceding sentence, section 290.133, subdivision 3(a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

Subd. 5. **Distributions of stock and stock rights.** (a) Except as provided in clause (b), gross income does not include the amount of any distribution made by a corporation to its shareholders, with respect to the stock of such corporation, in its stock or in rights to acquire its stock.

(b) Clause (a) shall not apply to a distribution by a corporation of its stock (or rights to acquire its stock), and the distribution shall be treated as a distribution of property to which subdivision 1 applies:

(1) to the extent that the distribution is made in discharge of preference dividends for the taxable year of the corporation in which the distribution is made or for the preceding taxable year; or

(2) if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either:

(A) in its stock (or in rights to acquire its stock), or

(B) in property.

Subd. 6. **Dispositions of certain stock.** (a) If a shareholder sells or otherwise disposes of subdivision 6 stock (as defined in clause (c)):

(1) If such disposition is not a redemption (within the meaning of section 290.133, subdivision 2(b)):

(A) The amount realized shall be treated as gain from the sale of property which is not a capital asset. This subparagraph shall not apply to the extent that:

(i) the amount realized, exceeds

(ii) such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of subdivision 6 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of:

(i) the amount treated under subparagraph (A) as gain from the sale of property which is not a capital asset, plus

(ii) the adjusted basis of the stock, shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(2) If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which subdivision 1 applies.

(b) Clause (a) shall not apply:

(1) Termination of shareholder's interest.

(A) If the disposition

(i) is not a redemption;

(ii) is not, directly or indirectly, to a person the ownership of whose stock would (under section 290.133, subdivision 3(a)) be attributable to the shareholder; and

(iii) terminates the entire stock interest of shareholder in the corporation (and for purposes of this part of subparagraph (A), section 290.133, subdivision 3(a) shall apply).

(B) If the disposition is a redemption and subdivision 2(b) (3) applies.

(2) If the subdivision 6 stock is redeemed in a distribution in partial or complete liquidation to which sections 290.134 and 290.135 apply.

(3) To the extent that, under any provision of this chapter, gain or loss to the shareholder is not recognized with respect to the disposition of the subdivision 6 stock.

(4) If it is established to the satisfaction of the commissioner:

(A) that the distribution, and the disposition or redemption, or

(B) in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the subdivision 6 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the subdivision 6 stock, was not in pursuance of a plan having as one of its principal purposes the avoidance of state income tax.

(c) (1) For purposes of sections 290.131 through 290.138, the term "subdivision 6 stock" means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of subdivision 5(a), any part of such distribution was not includible in the gross income of the shareholder.

(B) Stock which is not common stock and:

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 290.136, subdivision 9(a)), or in a distribution or exchange to which section 290.136, subdivision 3 (or so much of section 290.136, subdivision 4 as relates to section 290.136, subdivision 3) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of section 290.136, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for subdivision 6 stock. For purposes of this subdivision, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of subdivision 6 stock.

(2) For purposes of this subdivision, the term "subdivision 6 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(d) For purposes of this subdivision

(1) stock rights shall be treated as stock, and

(2) stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) For purposes of clause (c)

(1) if subdivision 6 stock was issued with respect to common stock and later such subdivision 6 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the subdivision 6 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as subdivision 6 stock; and

(2) common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) If a substantial change is made in the terms and conditions of any stock, then, for purposes of this subdivision

(1) the fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) clause (c) (2) shall not apply unless the stock meets the requirements of such clause both at the time of such distribution and at the time of such change.

Subd. 7. **Basis of stock and stock rights acquired in distributions.** (a) If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this clause as "new stock") in a distribution to which subdivision 5(a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this subdivision as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the commissioner.

(b) (1) If

(A) a corporation distributes rights to acquire its stock to a shareholder in a distribution to which subdivision 5(a) applies, and

(B) the fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time, then clause (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this clause to determine the basis of the old stock and of the stock rights under the method of allocation provided in clause (a).

(2) The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the commissioner may by regulations prescribe, and shall be irrevocable when made.

History: *1957 c 621 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 376 s 13; 1980 c 419 s 15; 1980 c 607 art 1 s 32*

290.132 DISTRIBUTIONS BY CORPORATIONS; EFFECTS ON CORPORATION.

Subdivision 1. **Taxability of corporation on distribution.** (a) Except as provided in clauses (b) and (c) of this subdivision and section 290.07, subdivision 5(3), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of:

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) (1) If a corporation inventorying goods under the LIFO method (relating to last-in, first-out inventories) distributes inventory assets (as defined in paragraph (2) (A)), then the amount (if any) by which:

(A) the inventory amount (as defined in paragraph (2) (B)) of such assets under a method authorized by section 290.11 (relating to general rule for inventories), exceeds

(B) the inventory amount of such assets under the LIFO method, shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(2) For purposes of paragraph (1);

(A) The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(B) The term "inventory amount" means, in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(3) For purposes of this clause, the inventory amount of assets under a method authorized by section 290.11 shall be determined:

(A) if the corporation uses the LIFO method of valuing inventories, by using such method, or

(B) if subparagraph (A) does not apply, by using cost or market, whichever is lower.

(c) If:

(1) a corporation distributes property to a shareholder with respect to its stock,

(2) such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and

(3) the amount of such liability exceeds the adjusted basis (in the hands of the distributing corporation) of such property, then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its adjusted basis.

Subd. 2. **Effect on earnings and profits.** (a) Except as otherwise provided in this subdivision, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of

(1) the amount of money,

(2) the principal amount of the obligations of such corporation, and

(3) the adjusted basis of the other property, so distributed.

(b) (1) On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in paragraph (2) (A)) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation

(A) shall be increased by the amount of such excess; and

(B) shall be decreased by whichever of the following is the lesser:

(i) the fair market value of the inventory assets distributed, or

(ii) the earnings and profits (as increased under subparagraph (A)).

(2) (A) For purposes of paragraph (1), the term "inventory assets" means:

(i) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable years:

(ii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and

(iii) unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subparagraph.

(B) For purposes of subparagraph (A) (iii), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for:

(i) goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(ii) services rendered or to be rendered.

(c) In making the adjustments to the earnings and profits of a corporation under clause (a) or (b), proper adjustment shall be made for:

(1) the amount of any liability to which the property distributed is subject,

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(3) any gain to the corporation recognized under clause (b) or (c) of subdivision 1.

(d) (1) The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this chapter applies, shall not be considered a distribution of the earnings and profits of any corporation

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this chapter, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 290.131, subdivision 5(a).

(2) In the case of a distribution of stock or securities, or property, to which corresponding provisions of law prior to the passage of this act apply, the effect on earnings and profits of such distribution shall be determined under such prior law.

(3) For purposes of this clause, the term "stock or securities" includes rights to acquire stock or securities.

(e) In the case of amounts distributed in partial liquidation (whether before, on, or after December 31, 1956) or in a redemption to which section 290.131, subdivision 2(a) or subdivision 3 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.

(f) (1) The gain or loss realized from the sale or other disposition (after December 31, 1932) of property by a corporation

(A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in paragraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of January 1, 1933, but

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after December 31, 1932, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain. Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this clause, a loss with respect to which a deduction is disallowed, section 290.09, subdivision 5, (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions. Where a corporation receives (after December 31, 1932) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 290.131, subdivision 7(b), be so allocated).

(g) (1) If any increase or decrease in the earnings and profits for any period beginning after December 31, 1932, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its January 1, 1933, value, then except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before January 1, 1933.

(2) If the application of clause (f) to a sale or other disposition after December 31, 1932, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after December 31, 1932, then, notwithstanding clause (f) and in lieu of the rule provided in paragraph (1) of this clause, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the

property on January 1, 1933, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before January 1, 1933.

(h) In the case of a personal service corporation subject for any taxable year to supplement S of the Internal Revenue Code of 1939, an amount equal to the undistributed supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

(i) In the case of a distribution or exchange to which section 290.136, subdivision 3 (or so much of section 290.136, subdivision 4 as relates to section 290.136, subdivision 3) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the commissioner.

(j) (1) If a corporation distributes property with respect to its stock, and if, at the time of the distributions:

(A) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(B) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan, then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of subparagraph (B) of the preceding sentence, the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 290.12, subdivision 2 (relating to adjustment for depreciation, etc.). For the purposes of this paragraph, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

(2) Paragraph (1) shall apply only with respect to distributions made on or after December 31, 1956.

History: *1957 c 621 s 2*

290.133 DEFINITIONS, CONSTRUCTIVE OWNERSHIP OF STOCK.

Subdivision 1. **Dividend defined.** (a) For purposes of this chapter, the term "dividend" means any distribution of property made by a corporation to its shareholders:

(1) out of its earnings and profits accumulated after December 31, 1932, or

(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. Except as otherwise provided in this chapter, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of sections 290.131 through 290.138, treated as a distribution of property to which section 290.131, subdivision 1 applies, such distribution shall be treated as a distribution of property for purposes of this clause.

Subd. 2. **Other definitions.** (a) For purposes of sections 290.131 to 290.133, the term "property" means money, securities, and any other property; except

that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) For purposes of sections 290.131 to 290.133, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

Subd. 3. **Constructive ownership of stock.** (a) For purposes of those provisions of this chapter to which the rules contained in this subdivision are expressly made applicable:

(1) (A) An individual shall be considered as owning the stock owned, directly or indirectly, by or for:

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or legal separation), and

(ii) his children, grandchildren, and parents.

(B) For purposes of subparagraph (A) (ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) (A) Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as being owned by the partnership or estate.

(B) Stock owned, directly or indirectly, by or for a trust shall be considered as being owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust. Stock owned, directly or indirectly, by or for a beneficiary of a trust shall be considered as being owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of the preceding sentence, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is five percent or less of the value of the trust property. Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under sections 290.27, or 290.28 (relating to grantors and others treated as substantial owners) shall be considered as being owned by such person; and such trust shall be treated as owning the stock owned, directly or indirectly, by or for that person. This subparagraph shall not apply with respect to any employees' trust described in section 290.26 which is exempt from tax under said section.

(C) If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, then:

(i) such person shall be considered as owning the stock owned, directly or indirectly, by or for that corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation; and

(ii) such corporation shall be considered as owning the stock owned, directly or indirectly, by or for that person.

(3) If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) (A) Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), or (3) shall, for purposes of applying paragraph (1), (2), or (3), be treated as actually owned by such person.

(B) Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be treated as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (3), it shall be considered as owned by him under paragraph (3).

History: *1957 c 621 s 3; 1978 c 772 s 62*

290.134 CORPORATE LIQUIDATIONS; EFFECTS ON RECIPIENTS.

Subdivision 1. **Gain or loss to shareholders in corporate liquidations.** (a) (1) Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(2) Amounts distributed in partial liquidation of a corporation (as defined in section 290.135, subdivision 4) shall be treated as in part or full payment in exchange for the stock.

(b) Section 290.131, subdivision 1, (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property in partial or complete liquidation.

Subd. 2. **Complete liquidations of subsidiaries.** (a) No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) For purposes of clause (a), a distribution shall be considered to be in complete liquidation only if:

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation. If such transfer of all the property does not occur within the taxable year, the commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A dis-

tribution otherwise constituting a distribution in complete liquidation within the meaning of this clause shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this clause a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 290.136, subdivision 7 and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 290.136, subdivision 2, of the shares not owned by taxpayer.

(c) If:

(1) a corporation is liquidated and clause (a) applies to such liquidation, and

(2) on the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80 percent stock ownership requirements specified in clause (b),

then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness.

Subd. 3. **Election as to recognition of gain in certain liquidations.** (a) In the case of property distributed in complete liquidation of a corporation (other than a collapsible corporation to which section 290.135, subdivision 3(a) applies), if:

(1) the liquidation is made in pursuance of a plan of liquidation adopted on or after December 31, 1956, and

(2) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month, then in the case of each qualified electing shareholder (as defined in clause (c)) gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in clauses (e) and (f).

(b) For purposes of this subdivision, the term "excluded corporation" means a corporation which at any time between December 31, 1956, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(c) For purposes of this subdivision, the term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of clause (a) has been made and filed in accordance with clause (d), but:

(1) in the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

(2) in the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting

power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(d) The written elections referred to in clause (c) must be made and filed in such manner as to be not in contravention of regulations prescribed by the commissioner. The filing must be within 30 days after the date of the adoption of the plan of liquidation.

(e) In the case of a qualified electing shareholder other than a corporation:

(1) there shall be recognized, and treated as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after December 31, 1932, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under clause (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

(2) there shall be recognized, and treated as short-term or long-term capital gain, as the case may be, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1956, exceeds his ratable share of such earnings and profits.

(f) In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized only to the extent of the greater of the two following:

(1) the portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after December 31, 1956; or

(2) its ratable share of the earnings and profits of the liquidating corporation accumulated after December 31, 1932, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under clause (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

Subd. 4. **Basis of property received in liquidations.** (a) If property is received in a distribution in partial or complete liquidation (other than a distribution to which subdivision 3 applies), and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) (1) If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of subdivision 2(b)), then, except as provided in paragraph (2), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which subdivision 2(c) applies, and if paragraph (2) of this clause does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(2) If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of subdivision 2(b)), and if:

(A) the distribution is pursuant to a plan of liquidation adopted

(i) on or after December 31, 1956, and

(ii) not more than two years after the date of the transaction described in subparagraph (B) (or, in the case of a series of transactions, the date of the last such transaction); and (B) stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in paragraph (3)) during a period of not more than 12 months, then the basis of the property in the hands of the distributee shall be the adjusted basis of the stock with respect to which the distribution was made. For purposes of the preceding sentence, under regulations prescribed by the commissioner, proper adjustment in the adjusted basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items.

(3) For purposes of paragraph (2) (B), the term "purchase" means any acquisition of stock, but only if:

(A) the basis of the stock in the hands of the distributee is not determined (i) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (ii) under section 290.14(4) (relating to property acquired from a decedent).

(B) the stock is not acquired in an exchange to which section 290.136, subdivision 1 applies, and

(C) the stock is not acquired from a person the ownership of whose stock would, under section 290.133, subdivision 3(a), be attributed to the person acquiring such stock.

(4) For purposes of this clause, the term "distributee" means only the corporation which meets the 80 percent stock ownership requirements specified in subdivision 2(b).

(c) If:

(1) property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and

(2) with respect to such acquisition:

(A) gain was realized, but

(B) as the result of an election made by the shareholder under subdivision 3, the extent to which gain was recognized was determined under subdivision 3, then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him.

History: *1957 c 621 s 4*

290.135 CORPORATE LIQUIDATIONS; EFFECTS ON CORPORATION.

Subdivision 1. **General rule.** Except as provided in section 290.07, subdivision 5(4) (relating to disposition of installment obligations), no gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation.

Subd. 2. **Gain or loss on sales or exchanges in connection with certain liquidation.** (a) If:

(1) a corporation adopts a plan of complete liquidation on or after December 31, 1956, and

(2) within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims, then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(b) (1) For purposes of clause (a), the term "property" does not include:

(A) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business.

(B) installment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in clause (a)) of stock in trade or other property described in subparagraph (A) of this paragraph, and

(C) installment obligations acquired in respect of property (other than property described in subparagraph (A)) sold or exchanged before the date of the adoption of such plan of liquidation.

(2) Notwithstanding paragraph (1) of this clause, if substantially all of the property described in subparagraph (A) of such paragraph (1) which is attributable to a trade or business of the corporation is, in accordance with this subdivision, sold or exchanged to one person in one transaction, then for purposes of clause (a) the term "property" includes:

(A) such property so sold or exchanged, and

(B) installment obligations acquired in respect of such sale or exchange.

(c) (1) This subdivision shall not apply to any sale or exchange

(A) made by a collapsible corporation (as defined in subdivision 3(b)), or

(B) following the adoption of a plan of complete liquidation, if section 290.134, subdivision 3 applies with respect to such liquidation.

(2) In the case of a sale or exchange following the adoption of a plan of complete liquidation, if section 290.134, subdivision 2 applies with respect to such liquidation, then

(A) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 290.134, subdivision 4(b) (1), this subdivision shall not apply; or

(B) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 290.134, subdivision 4(b) (2), this subdivision shall apply only to that portion (if any) of the gain which is not greater than the excess of (i) that portion of the adjusted basis (adjusted for any adjustment required under the second sentence of section 290.134, subdivision 4(b) (2)) of the stock of the liquidating corporation which is allocable, under regulations prescribed by the commissioner, to the property sold or exchanged, over (ii) the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

(d) If a corporation adopts a plan of complete liquidation on or after January 1, 1961, and if clause (a) does not apply to sales or exchanges of property by such corporation, solely by reason of the application of clause (c) (2) (A), then for the first taxable year of any shareholder (other than a corporation which meets the 80 percent stock ownership requirement specified in section 290.134, subdivision 2(b) (1)) in which he receives a distribution in complete liquidation

(1) the amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by this chapter on such corporation would have been reduced if clause (c) (2) (A) had not been applicable, and

(2) for purposes of this chapter, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by this chapter on such shareholder for such taxable year, an amount of tax equal to the amount of the increase described in paragraph (1).

Subd. 3. **Collapsible corporations.** (a) Gain from

(1) the sale or exchange of stock of a collapsible corporation,

(2) a distribution in partial or complete liquidation of a collapsible corporation, which distribution is treated under section 290.134 and this section as in part or full payment in exchange for stock, and

(3) a distribution made by a collapsible corporation which, under section 290.131, subdivision 1(c) (3) (A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property, to the extent that it would be considered (but for the provision of this subdivision) as gain from the sale or exchange of a capital asset held for more than six months shall, except as provided in clause (d), be considered as gain from the sale or exchange of property which is not a capital asset.

(b) (1) For purposes of this subdivision, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to

(A) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing or purchasing the property of a substantial part of the taxable income to be derived from such property, and

(B) the realization by such shareholders of gain attributable to such property.

(2) For purposes of paragraph (1), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if:

(A) it engaged in the manufacture, construction, or production of such property to any extent.

(B) it holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

(C) it holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) For purposes of this subdivision, the term "section 290.135, subdivision 3 assets" means property held for a period of less than three years which is:

(A) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(B) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business;

(C) unrealized receivables or fees, except receivables from sales of property other than property described in this paragraph; or

(D) property described in section 290.16, subdivision 9 (without regard to any holding period therein provided), except such property which is or has been used in connection with the manufacture, construction, production, or sale of property described in subparagraph (A) or (B). In determining whether the three-year holding period specified in this paragraph has been satisfied, section

290.16, subdivision 8 shall apply, but no such period shall be deemed to begin before the completion of the manufacture, construction, production, or purchase.

(4) For purposes of paragraph (3) (C), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for:

(A) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(B) services rendered or to be rendered.

(c) (1) For purposes of this subdivision, a corporation shall, unless shown to the contrary, be deemed to be a collapsible corporation if (at the time of the sale or exchange, or the distribution, described in clause (a)) the fair market value of its section 290.135, subdivision 3 assets (as defined in clause (b) (3)) is:

(A) 50 percent or more of the fair market value of its total assets, and

(B) 120 percent or more of the adjusted basis of such section 290.135, subdivision 3 assets.

Absence of the conditions described in subparagraph (A) and (B) shall not give rise to a presumption that the corporation was not a collapsible corporation.

(2) In determining the fair market value of the total assets of a corporation for purposes of paragraph (1) (A), there shall not be taken into account:

(A) cash,

(B) obligations which are capital assets in the hands of the corporation (and obligations of the United States or any of its possessions, or of a state or territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue), and

(C) stock in any other corporation.

(d) In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this subdivision shall not apply:

(1) unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in clause (b) (3) or at any time thereafter, such shareholder (A) owned (or was considered as owning) more than five percent in value of the outstanding stock of the corporation, or (B) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than five percent in value of the outstanding stock of the corporation:

(2) to the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(3) to gain realized after the expiration of three years following the completion of such manufacture, construction, production, or purchase. For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544(a) of the Internal Revenue Code of 1954, as amended through December 31, 1979 (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

(e) (1) Sales or exchanges of stock. For purposes of clause (a) (1), a corporation shall not be considered to be a collapsible corporation with respect to any sale or exchange of stock of the corporation by a shareholder, if, at the time of such sale or exchange, the sum of

(A) the net unrealized appreciation in clause (e) assets of the corporation (as defined in paragraph (5) (A)), plus

(B) if the shareholder owns more than five percent in value of the outstanding stock of the corporation, the net unrealized appreciation in assets of the corporation (other than assets described in subparagraph (A)) which would be clause (e) assets under (i) and (iii) of paragraph (5) (A) if the shareholder owned more than 20 percent in value of such stock, plus

(C) if the shareholder owns more than 20 percent in value of the outstanding stock of the corporation and owns, or at any time during the preceding three-year period owned, more than 20 percent in value of the outstanding stock of any other corporation more than 70 percent in value of the assets of which are, or were at any time during which such shareholder owned during such three-year period more than 20 percent in value of the outstanding stock, assets similar or related in service or use to assets comprising more than 70 percent in value of the assets of the corporation, the net unrealized appreciation in assets of the corporation (other than assets described in subparagraph (A)) which would be clause (e) assets under (i) and (iii) of paragraph (5) (A) if the determination whether the property, in the hands of such shareholder, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 290.16, subdivision 9, were made

(i) by treating any sale or exchange by such shareholder of stock in such other corporation within the preceding three-year period (but only if at the time of such sale or exchange the shareholder owned more than 20 percent in value of the outstanding stock in such other corporation) as a sale or exchange by such shareholder of his proportionate share of the assets of such other corporation, and

(ii) by treating any sale or exchange of property by such other corporation within such three-year period (but only if at the time of such sale or exchange the shareholder owned more than 20 percent in value of the outstanding stock in such other corporation), gain or loss on which was not recognized to such other corporation under subdivision 2(a), as a sale or exchange by such shareholder of his proportionate share of the property sold or exchanged, does not exceed an amount equal to 15 percent of the net worth of the corporation. This paragraph shall not apply to any sale or exchange of stock to the issuing corporation or, in the case of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, to any sale or exchange of stock by such shareholder to any person related to him (within the meaning of paragraph (8)).

(2) Distribution in liquidation. For purposes of clause (a) (2), a corporation shall not be considered to be a collapsible corporation with respect to any distribution to a shareholder pursuant to a plan of complete liquidation if, by reason of the application of paragraph (4) of this clause, subdivision 2(a) applies to sales or exchanges of property by the corporation within the 12-month period beginning on the date of the adoption of such plan, and if, at all times after the adoption of the plan of liquidation, the sum of

(A) the net unrealized appreciation in clause (e) assets of the corporation (as defined in paragraph (5) (A)), plus

(B) if the shareholder owns more than five percent in value of the outstanding stock of the corporation, the net unrealized appreciation in assets of

the corporation described in paragraph (1) (B) (other than assets described in subparagraph (A) of this paragraph), plus

(C) if the shareholder owns more than 20 percent in value of the outstanding stock of the corporation and owns, or at any time during the preceding three-year period owned, more than 20 percent in value of the outstanding stock of any other corporation more than 70 percent in value of the assets of which are, or were at any time during which such shareholder owned during such three-year period more than 20 percent in value of the outstanding stock, assets similar or related in service or use to assets comprising more than 70 percent in value of the assets of the corporation, the net unrealized appreciation in assets of the corporation described in paragraph (1) (C) (other than assets described in subparagraph (A) of this paragraph), does not exceed an amount equal to 15 percent of the net worth of the corporation.

(3) Recognition of gain in certain liquidations. For purposes of section 290.134, subdivision 3, a corporation shall not be considered to be a collapsible corporation if at all times after the adoption of the plan of liquidation, the net unrealized appreciation in clause (e) assets of the corporation (as defined in paragraph (5) (B)) does not exceed an amount equal to 15 percent of the net worth of the corporation.

(4) Gain or loss on sales or exchanges in connection with certain liquidations. For purposes of subdivision 2, a corporation shall not be considered to be a collapsible corporation with respect to any sale or exchange by it of property within the 12-month period beginning on the date of the adoption of a plan of complete liquidation, if

(A) at all times after the adoption of such plan, the net unrealized appreciation in clause (e) assets of the corporation (as defined in paragraph (5) (A)) does not exceed an amount equal to 15 percent of the net worth of the corporation,

(B) within the 12-month period beginning on the date of the adoption of such plan, the corporation sells substantially all of the properties held by it on such date, and

(C) following the adoption of such plan, no distribution is made of any property which in the hands of the corporation or in the hands of the distributee is property in respect of which a deduction for exhaustion, wear and tear, obsolescence, amortization, or depletion is allowable. This paragraph shall not apply with respect to any sale or exchange of property by the corporation to any shareholder who owns more than 20 percent in value of the outstanding stock of the corporation or to any person related to such shareholder (within the meaning of paragraph (8)), if such property in the hands of the corporation or in the hands of such shareholder or related person is property in respect of which a deduction for exhaustion, wear and tear, obsolescence, amortization, or depletion is allowable.

(5) Clause (e) Asset Defined. (A) For purposes of paragraphs (1), (2), and (4), the term "clause (e) asset" means, with respect to property held by any corporation

(i) property (except property used in the trade or business as defined in paragraph (9)) which in the hands of the corporation is, or, in the hands of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, would be, property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 290.16, subdivision 9;

(ii) property used in the trade or business (as defined in paragraph (9)), but only if the unrealized depreciation on all such property on which there is

unrealized depreciation exceeds the unrealized appreciation on all such property on which there is unrealized appreciation;

(iii) if there is net unrealized appreciation on all property used in the trade or business (as defined in paragraph (9)), property used in the trade or business (as defined in paragraph (9)) which, in the hands of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 290.16, subdivision 9; and

(iv) property (unless included under (i), (ii), or (iii)) which consists of a copyright, a literary, musical, or artistic composition, or similar property, or any interest in any such property, if the property was created in whole or in part by the personal efforts of any individual who owns more than five percent in value of the stock of the corporation. The determination as to whether property of the corporation in the hands of the corporation is, or in the hands of a shareholder would be, property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 290.16, subdivision 9 shall be made as if all property of the corporation had been sold or exchanged to one person in one transaction.

(B) For purposes of paragraph (3), the term "clause (e) asset" means, with respect to property held by any corporation, property described in (i), (ii), (iii), and (iv) of subparagraph (A), except that (i) and (iii) shall apply in respect of any shareholder who owns more than five percent in value of the outstanding stock of the corporation (in lieu of any shareholder who owns more than 20 percent in value of such stock).

(6) Net unrealized appreciation defined. (A) For purposes of this clause, the term "net unrealized appreciation" means, with respect to the assets of a corporation, the amount by which

(i) the unrealized appreciation in such assets on which there is unrealized appreciation, exceeds

(ii) the unrealized depreciation in such assets on which there is unrealized depreciation.

(B) For purposes of subparagraph (A) and paragraph (5) (A), the term "unrealized appreciation" means, with respect to any asset, the amount by which

(i) the fair market value of such asset, exceeds

(ii) the adjusted basis for determining gain from the sale or other disposition of such asset.

(C) For purposes of subparagraph (A) and paragraph (5) (A), the term "unrealized depreciation" means, with respect to any asset, the amount by which

(i) the adjusted basis for determining gain from the sale or other disposition of such asset, exceeds

(ii) the fair market value of such asset.

(D) For purposes of this paragraph (but not paragraph (5) (A)), in the case of any asset on the sale or exchange of which only a portion of the gain would under any provision of this chapter be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 290.16, subdivision 9, there shall be taken into account only an amount of the unrealized appreciation in such asset which is equal to such portion of the gain.

(7) Net worth defined. For purposes of this clause, the net worth of a corporation, as of any day, is the amount by which

(A) (i) the fair market value of all its assets at the close of such day, plus

(ii) the amount of any distribution in complete liquidation made by it on or before such day, exceeds

(B) all its liabilities at the close of such day. For purposes of this paragraph, the net worth of a corporation as of any day shall not take into account any increase in net worth during the one-year period ending on such day to the extent attributable to any amount received by it for stock, or as a contribution to capital or as paid-in surplus, if it appears that there was not a bona fide business purpose for the transaction in respect of which such amount was received.

(8) Related person defined. For purposes of paragraph (1) and (4), the following persons shall be considered to be related to a shareholder:

(A) If the shareholder is an individual

(i) his spouse, ancestors, and lineal descendants, and

(ii) a corporation which is controlled by such shareholder.

(B) If the shareholder is a corporation

(i) a corporation which controls, or is controlled by, the shareholder, and

(ii) if more than 50 percent in value of the outstanding stock of the shareholder is owned by any person a corporation more than 50 percent in value of the outstanding stock of which is owned by the same person.

For purposes of determining the ownership of stock in applying subparagraph (A) and (B), the rules of section 267(c) of the Internal Revenue Code of 1954, as amended through December 31, 1979 shall apply, except that the family of an individual shall include only his spouse, ancestors, and lineal descendants. For purposes of this paragraph, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(9) Property used in the trade or business. For purposes of this clause, the term "property used in the trade or business" means property described in section 290.16, subdivision 9, without regard to any holding period therein provided.

(10) Ownership of stock. For purposes of this clause (other than paragraph (8)), the ownership of stock shall be determined in the manner prescribed in clause (d).

(11) Corporations and shareholders not meeting requirements. In determining whether or not any corporation is a collapsible corporation within the meaning of clause (b), the fact that such corporation, or such corporation with respect to any of its shareholders, does not meet the requirements of paragraph (1), (2), (3), or (4) of this clause shall not be taken into account, and such determination, in the case of a corporation which does not meet such requirements, shall be made as if this clause had not been enacted.

Subd. 4. **Partial liquidation defined.** (a) For purposes of sections 290.131 through 290.138 distribution shall be treated as in partial liquidation of a corporation if:

(1) the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(2) the distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the

requirements of clause (b). A partial liquidation includes a redemption of stock to which section 290.131, subdivision 2 applies.

(b) A distribution shall be treated as a distribution described in clause (a) (2) if the requirement of paragraphs (1) and (2) of this clause are met.

(1) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the five-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the five-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part. Whether or not a distribution meets the requirements of paragraphs (1) and (2) of this clause shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

(c) The fact that, with respect to a shareholder, a distribution qualifies under section 290.131, subdivision 2(a) (relating to redemptions treated as distributions in part or full payment in exchange for stock) by reason of section 290.131, subdivision 2(b) shall not be taken into account in determining whether the distribution, with respect to such shareholder, is also a distribution in partial liquidation of the corporation.

History: *1957 c 621 s 5; 1961 c 501 s 6,7; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32*

290.136 CORPORATE ORGANIZATIONS AND REORGANIZATIONS.

Subdivision 1. **Transfer to corporation controlled by transferor.** (a) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control (as defined in subdivision 9(c)) of the corporation. For purposes of this subdivision, stock or securities issued for services shall not be considered as issued in return for property.

(b) If clause (a) would apply to an exchange but for the fact that there is received, in addition to the stock or securities permitted to be received under clause (a), other property or money, then:

(1) gain (if any) to such recipient shall be recognized, but not in excess of:

(A) the amount of money received, plus

(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) In determining control, for purposes of this subdivision, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

Subd. 2. **Exchanges of stock and securities in certain reorganizations.** (a) (1) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Paragraph (1) shall not apply if:

(A) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(B) any such securities are received and no such securities are surrendered.

(b) (1) Clause (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subdivision 9(a) (1) (D), unless;

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(c) Notwithstanding any other provision of sections 290.131 through 290.138, clause (a) (1) (and so much of subdivision 4 as relates to this subdivision) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of subdivision 9(a)) for a railroad approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or under section 20b of the Interstate Commerce Act, as being in the public interest.

Subd. 3. **Distribution of stock and securities of a controlled corporation.** (a) (1) If:

(A) a corporation (referred to in this subdivision as the "distributing corporation"):

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities, solely stock or securities of a corporation (referred to in this subdivision as "controlled corporation") which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device).

(C) the requirements of clause (b) (relating to active businesses) are satisfied, and

(D) as part of the distribution, the distributing corporation distributes

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of subdivision 9(c), and it is established to the satisfaction of the commissioner that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of state income tax, then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation.

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of subdivision 9(a) (1) (D)).

(3) Paragraph (1) shall not apply if:

(A) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(B) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution. For purposes of this subdivision (other than paragraph (1) (D) of this clause) and so much of subdivision 4 as relates to this subdivision, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction which occurs within five years of the distribution of such stock and in which gain or loss was recognized in whole or in part, shall not be treated as stock of such controlled corporation, but as other property.

(b) (1) Clause (a) shall apply only if either:

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if:

(A) it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged.

(B) such trade or business has been actively conducted throughout the five-year period ending on the date of the distribution.

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business:

(i) was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or

(ii) was so acquired by another corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

(c) Any such distribution made in a taxable year ending after December 31, 1955, shall if heretofore determined to be non-taxable under federal law by the secretary of the treasury of the United States, or his delegate, be governed by the provisions of this subdivision 3.

Subd. 4. **Receipt of additional consideration.** (a) (1) If:

(A) subdivision 2 or subdivision 3 would apply to an exchange but for the fact that

(B) the property received in the exchange consists not only of property permitted by subdivision 2 or subdivision 3 to be received without the recognition of gain but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each dis-

tributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after December 31, 1932. The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

(b) If:

(1) subdivision 3 would apply to a distribution but for the fact that

(2) the property received in the distribution consists not only of property permitted by subdivision 3 to be received without the recognition of gain, but also of other property or money, then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 290.131, subdivision 1 applies.

(c) If:

(1) subdivision 2 would apply to an exchange, or subdivision 3 would apply to an exchange or distribution, but for the fact that

(2) the property received in the exchange or distribution consists not only of property permitted by subdivisions 2 or 3 to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange or distribution shall be recognized.

(d) For purposes of this subdivision:

(1) Except as provided in paragraph (2), the term "other property" includes securities.

(2) (A) The term "other property" does not include securities to the extent that, under subdivisions 2 or 3, such securities would be permitted to be received without the recognition of gain.

(B) If:

(i) in an exchange described in subdivision 2 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) the principal amount of such securities received exceeds the principal amount of such securities surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C) if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(C) If, in an exchange or distribution described in subdivision 3, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

(e) Notwithstanding any other provision of this subdivision, to the extent that any of the other property (or money) is received in exchange for section 290.131, subdivision 6 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 290.131, subdivision 1 applies.

Subd. 5. **Assumption of liability.** (a) Except as provided in clauses (b) and (c), if:

(1) the taxpayer receives property which would be permitted to be received under subdivision 1 or 7, or section 290.137, subdivision 1 or 3 without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability, then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of subdivision 1 or 7, or section 290.137, subdivision 1 or 3 as the case may be.

(b) (1) If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in clause (a):

(A) was a purpose to avoid state income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose, then such assumption or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall, for purposes of subdivision 1 or 7, or section 290.137, subdivision 1 or 3 (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) (1) In the case of an exchange:

(A) to which subdivision 1 applies, or

(B) to which subdivision 7 applies by reason of a plan of reorganization within the meaning of subdivision 9(a) (1) (D), if the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Paragraph (1) shall not apply to any exchange to which:

(A) clause (b) (1) of this subdivision applies, or

(B) section 290.137, subdivision 1 or 3 applies.

Subd. 6. **Basis to distributees.** (a) In the case of an exchange to which subdivisions 1, 2, 3, 4, 7 or section 290.137, subdivision 1(b) applies:

(1) The basis of the property permitted to be received under such subdivision without the recognition of gain or loss shall be the same as that of the property exchanged;

(A) decreased by;

(i) the fair market value of any other property (except money) received by the taxpayer, and

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by;

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) (1) Under regulations prescribed by the commissioner, the basis determined under clause (a) (1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) In the case of an exchange to which subdivision 3 (or so much of subdivision 4 as relates to subdivision 3) applies, then in making the allocation under paragraph (1) of this clause, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) For purposes of this subdivision, a distribution to which subdivision 3 (or so much of subdivision 4 as relates to subdivision 3) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability such assumption or acquisition (in the amount of the liability) shall, for purposes of this subdivision, be treated as money received by the taxpayer on the exchange.

(e) This subdivision shall not apply to property acquired by a corporation by the issuance of its stock or securities, or the stock or securities of a corporation which is in control of the acquiring corporation, as consideration in whole or in part for the transfer of the property to it.

Subd. 7. **Nonrecognition of gain or loss to corporation.** (a) No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) (1) If clause (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by clause (a) to be received without the recognition of gain, but also of other property or money, then;

(A) if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(2) If clause (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by clause (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

Subd. 8. **Basis to corporation.** (a) If property was acquired in a taxable year beginning after December 31, 1956, by a corporation;

(1) in connection with a transaction to which subdivision 1 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) If property was acquired by a corporation in connection with a reorganization to which this section applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recog-

nized to the transferor on such transfer. This clause shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee, or of a corporation which is in control of the transferee, as the consideration in whole or in part for the transfer.

(c) (1) Notwithstanding clause (a) (2), if property other than money;

(A) is acquired by a corporation, on or after December 31, 1956, as a contribution to capital, and

(B) is not contributed by a shareholder as such, then the basis of such property shall be zero.

(2) Notwithstanding clause (a) (2), if money;

(A) is received by a corporation, on or after December 31, 1956, as a contribution to capital, and

(B) is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the commissioner.

Subd. 9. **Definitions relating to corporate reorganization.** (a) (1) For purposes of sections 290.131 to 290.136, the term "reorganization" means:

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under subdivision 2, 3, or 4;

(E) a recapitalization; or

(F) a mere change in identity, form, or place or organization, however effected.

(2) (A) If a transaction is described in both paragraph (1) (C) and paragraph (1) (D), then, for purposes of sections 290.131 through 290.138, such transaction shall be treated as described only in paragraph (1) (D).

(B) If — (i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1) (C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1) (C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation, then such acquisition shall (subject to sub-paragraph (A) of this paragraph) be treated as qualifying under paragraph (1) (C). Solely for the purpose of determining whether part (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C) A transaction otherwise qualifying under paragraph (1) (A), (1) (B) or paragraph (1) (C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock.

(D) The acquisition by one corporation, in exchange for stock of a corporation, referred to in this subparagraph as "controlling corporation," which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under paragraph (1) (A) of clause (a) if (i) such transaction would have qualified under paragraph (1) (A) of clause (a) if the merger had been into the controlling corporation, and (ii) no stock of the acquiring corporation is used in the transaction.

(b) For purposes of this section the term "a party to a reorganization" includes

(1) a corporation resulting from a reorganization, and

(2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under paragraph (1) (B) or (1) (C) of clause (a), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1) (A), (1) (B), or (1) (C) of clause (a) by reason of paragraph (2) (C) of clause (a), the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1) (A) of clause (a) by reason of paragraph (2) (D) of that clause, the term "a party to a reorganization" includes the controlling corporation referred to in such paragraph (2) (D).

(c) For purposes of sections 290.131 to 290.136, except section 290.131, subdivision 4, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

History: *1957 c 621 s 6; 1961 c 501 s 8; 1965 c 404 s 1; 1969 c 1052 s 1-3*

290.137 INSOLVENCY REORGANIZATION.

Subdivision 1. **Reorganization in certain receivership and bankruptcy proceedings.** (a) (1) No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (49 Stat. 922; 11 U.S.C. 205) is transferred in pursuance of an order of the court having jurisdiction of such corporation

(A) in a receivership, foreclosure, or similar proceedings, or

(B) in a proceeding under chapter X of the Bankruptcy Act (52 Stat. 883-905; 11 U.S.C., chapter 10) or the corresponding provisions of prior law, to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(2) If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then

(A) if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(b) (1) No gain or loss shall be recognized on an exchange consisting of the relinquishment of extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in clause (a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(2) If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of property permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) If an exchange would be within the provisions of clause (a) (1) or (b) (1) if it were not for the fact that the property received in exchange consists not only of property permitted by clause (a) (1) or (b) (1) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in section 290.136, subdivision 5 shall apply.

Subd. 2. **Basis in connection with certain receivership and bankruptcy proceedings.** (a) If property was acquired by a corporation in a transfer to which

(1) subdivision 1(a) of this section applies,

(2) so much of subdivision 1(c) as relates to subdivision 1(a) (1) applies, or

(3) the corresponding provisions of prior law apply, then notwithstanding the provisions of section 270 of the Bankruptcy Act (54 Stat. 709; 11 U.S.C. 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted under section 290.09, subdivision 12, by reason of a discharge of indebtedness in pursuance of the plan of reorganization under which such transfer was made.

Subd. 3. **Gain or loss not recognized in certain railroad reorganizations.** (a) (1) No gain or loss shall be recognized if property of a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (49 Stat. 922; 11 U.S.C. 205), is

transferred after December 31, 1956, in pursuance of an order of the court having jurisdiction of such corporation;

(A) in a receivership proceeding, or

(B) in a proceeding under section 77 of the Bankruptcy Act, to another railroad corporation (as defined in section 77(m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other railroad corporation.

(2) If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then:

(A) if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(3) If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(b) If the property of a railroad corporation (as defined in section 77(m) of the Bankruptcy Act) was acquired after December 31, 1956, in pursuance of an order of the court having jurisdiction of such corporation;

(1) in a receivership proceeding, or

(2) in a proceeding under section 77 of the Bankruptcy Act, and the acquiring corporation is a railroad corporation (as defined in section 77(m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired, increased in the amount of gain recognized under clause (a) (2) to the transferor on such transfer.

(c) In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in section 290.136, subdivision 5 shall apply.

History: *1957 c 621 s 7*

290.138 CARRYOVERS.

Subdivision 1. **Carryovers in certain corporate acquisitions.** (a) In the case of the acquisition of assets of a corporation by another corporation:

(1) in a distribution to such other corporation to which section 290.134, subdivision 2 (relating to liquidations of subsidiaries) applies, except in a case in which the basis of the assets distributed is determined under section 290.134, subdivision 4(b) (2); or

(2) in a transfer to which section 290.136, subdivision 7 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 290.136, subdivision 2(b) (1) are met), or (F) of section 290.136, subdivision 9(a) (1), the

acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in clause (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in clauses (b) and (c).

(b) Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 290.136, subdivision 9(a) (1);

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this subdivision, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the commissioner, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in clause (a) shall not be entitled to carry back a net operating loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) The items referred to in clause (a) are:

(1) The net operating loss carryovers determined under section 290.095, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 290.095, subdivision 3, a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 290.095, subdivision 3) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation;

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 290.095, subdivision 3 but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 290.095, subdivision 3(2), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 290.095, subdivision 3(2).

(2) In the case of a distribution or transfer described in clause (a):

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) The capital loss carryover determined under section 290.16, subdivision 6, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the net capital gain (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the net capital gain in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the commissioner.

(5) In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation, (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the commissioner.

(6) The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under paragraphs 2, 3, and 4 of section 290.09, subdivision 7(A) (b) on property acquired in a distribution or transfer with respect to that part or all of the basis in the hands of the acquiring corporation as does not exceed the basis in the hands of the distributor or transferor corporation.

(7) If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation has elected, under section 290.07, subdivision 5, to report on the installment basis) the acquiring corporation shall, for purposes of section 290.07, subdivision 5, be treated as if it were the distributor or transferor corporation.

(8) If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(9) The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 290.26 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(10) If the acquiring corporation is entitled to the recovery of bad debts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 290.071, subdivision 5 (relating to the recovery of bad debts).

(11) The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 290.13, subdivision 5.

(12) If the acquiring corporation:

(A) Assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income, the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this subdivision if the date of distribution or transfer had occurred on or after the effective date of the provisions of sections 290.131 to 290.138 applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1956, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

Subd. 2. **Special limitations on net operating loss carryovers.** (a) (1) If, at the end of a taxable year of a corporation

(A) any one or more of those persons described in paragraph (2) own a percentage of the total fair market value of the outstanding stock of such corporation which is at least 50 percentage points more than such person or persons owned at:

(i) the beginning of such taxable year, or

(ii) the beginning of the prior taxable year.

(B) the increase in percentage points at the end of such taxable year is attributable to:

(i) a purchase by such person or persons of such stock, the stock of another corporation owning stock in such corporation, or an interest in a partnership or trust owning stock in such corporation, or

(ii) a decrease in the amount of such stock outstanding or the amount of stock outstanding of another corporation owning stock in such corporation, except a decrease resulting from a redemption to pay death taxes to which section 290.131, subdivision 3 applies, and

(C) such corporation has not continued to carry on a trade or business substantially the same as that conducted before any change in the percentage ownership of the fair market value of such stock, the net operating loss carryovers, if any, from prior taxable years of such corporation to such taxable year and subsequent taxable years shall not be included in the net operating loss deduction for such taxable year and subsequent taxable years.

(2) The person or persons referred to in paragraph (1) shall be the ten persons (or such lesser number as there are persons owning the outstanding stock at the end of such taxable year) who own the greatest percentage of the fair market value of such stock at the end of such taxable year; except that, if any other person owns the same percentage of such stock at such time as is owned by one of the ten persons, such person shall also be included. If any of the persons are so related that such stock owned by one is attributed to the other under the rules specified in paragraph (3), such persons shall be considered as only one person solely for the purpose of selecting the ten persons (more or less) who own the greatest percentage of the fair market value of such outstanding stock.

(3) Section 290.133, subdivision 3 (relating to constructive ownership of stock) shall apply in determining the ownership of stock, except that section 290.133, subdivision 3(a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

(4) For purposes of this clause, the term "purchase" means the acquisition of stock, the basis of which is determined solely by reference to its cost to the holder thereof, in a transaction from a person or persons other than the person or persons the ownership of whose stock would be attributed to the holder by application of paragraph (3).

(b) (1) If, in the case of a reorganization specified in paragraph (2) of subdivision 1(a), the transferor corporation or the acquiring corporation:

(A) has a net operating loss which is a net operating loss carryover to the first taxable year of the acquiring corporation ending after the date of transfer, and

(B) the stockholders (immediately before the reorganization) of such corporation (hereinafter in this clause referred to as the "loss corporation"), as the result of owning stock of the loss corporation, own (immediately after the reorganization) less than 20 percent of the fair market value of the outstanding stock of the acquiring corporation, the total net operating loss carryover from prior taxable years of the loss corporation to the first taxable year of the acquiring corporation ending after the date of transfer shall be reduced by the percentage determined under paragraph (2).

(2) The reduction applicable under paragraph (1) shall be the percentage determined by subtracting from 100 percent:

(A) the percent of the fair market value of the outstanding stock of the acquiring corporation owned (immediately after the reorganization) by the

stockholders (immediately before the reorganization) of the loss corporation, as the result of owning stock of the loss corporation, multiplied by

(B) five.

(3) The limitation in this clause shall not apply if the transferor corporation and the acquiring corporation are owned substantially by the same persons in the same proportion.

(4) In computing the net operating loss carryovers to taxable years subsequent to a taxable year in which there was a limitation applicable to a net operating loss carryover by operation of this clause, the income in such taxable year, as computed under section 290.095, subdivision 3, shall be increased by the amount of the reduction of the total net operating loss carryover determined under paragraph (2).

(5) If the transferor corporation or the acquiring corporation owns (immediately before the reorganization) any of the outstanding stock of the loss corporation, such transferor corporation or acquiring corporation shall, for purposes of this clause, be treated as owning (immediately after the reorganization) a percentage of the fair market value of the acquiring corporation's outstanding stock which bears the same ratio to the percentage of the fair market value of the outstanding stock of the loss corporation (immediately before the reorganization) owned by such transferor corporation or acquiring corporation as the fair market value of the total outstanding stock of the loss corporation (immediately before the reorganization) bears to the fair market value of the total outstanding stock of the acquiring corporation (immediately after the reorganization).

(6) If the stockholders of the loss corporation (immediately before the reorganization) own, as a result of the reorganization, stock in a corporation, controlling the acquiring corporation, such stock of the controlling corporation shall, for purposes of this clause, be treated as stock of the acquiring corporation in an amount valued at an equivalent fair market value.

(c) For purposes of this subdivision, "stock" means all shares except nonvoting stock which is limited and preferred as to dividends.

History: *1957 c 621 s 8; 1971 c 24 s 29*

290.139 BASIS AND ADJUSTMENTS FOR CERTAIN YEARS.

The basis of property acquired in transactions occurring prior to taxable years beginning after December 31, 1956, and adjustments to such basis occurring prior to taxable years beginning after December 31, 1956, shall be determined in accordance with the income tax law applicable to the years involved.

History: *1957 c 621 s 17*

290.14 GAIN OR LOSS ON DISPOSITION OF PROPERTY, BASIS.

The basis for determining the gain or loss from the sale or other disposition of property acquired on or after January 1, 1933, shall be the cost to the taxpayer of such property, with the following exceptions:

(1) If the property should have been included in the last inventory, it shall be the last inventory value thereof;

(2) If the property was acquired by gift, it shall be the same as it would be if it were being sold or otherwise disposed of by the last preceding owner not acquiring it by gift; if the facts required for this determination cannot be ascertained, it shall be the fair market value as of the date, or approximate date, of acquisition by the last preceding owner, as nearly as the requisite facts can be ascertained by the commissioner;

(3) If the property was acquired by gift through an inter vivos transfer in trust, it shall be the same as it would be if it were being sold or otherwise disposed of by the grantor;

(4) Except as otherwise provided in this clause, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged or otherwise disposed of before the decedent's death by the person, be the fair market value of the property at the date of decedent's death.

For the purposes of the preceding paragraph, the following property shall be considered to have been acquired from or to have passed from the decedent:

(a) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(b) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(c) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(d) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(e) In the case of a decedent's dying after December 31, 1956, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate for Minnesota inheritance or estate tax purposes. In this case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under the first paragraph of this clause reduced by the amount allowed to the taxpayer as deductions in computing taxable net income under this chapter or prior Minnesota income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on the property before the death of the decedent. The basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to annuities described in section 290.08; and property described in paragraphs (a), (b), (c) and (d) of this clause.

This clause shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 290.077. Nor shall it apply to restricted stock options described in section 290.078 which the employee has not exercised at death.

(5) If the property was acquired after December 31, 1932, upon an exchange described in section 290.13, subdivision 1, the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon the exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 290.13, subdivision 1, to be received without the recognition of gain or loss, and in part of other property, the basis provided in this clause shall be allocated between the properties, other than money, received, and for the purpose of the allocation there shall be assigned to the other property an amount equivalent to its fair market value at the date of the exchange. This clause shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration, in whole or in part, for the transfer of the property to it;

(6) If substantially identical property was acquired in the place of stocks or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under section 290.09, subdivision 5, the basis in the case

of property so acquired shall be the same as in the case of the stock or securities so sold or disposed of, increased by the excess of the repurchase price of the property over the sale price of the stock or securities, or decreased by the excess of the sale price of the stock or securities over the repurchase price of the property;

(7) If the property was acquired after December 31, 1932, as the result of a compulsory or involuntary conversion described in section 290.13, subdivision 5, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law applicable to the year in which conversion was made, determining the taxable status of the gain or loss upon conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon conversion under the law applicable to the year in which conversion was made.

(8) Neither the basis nor the adjusted basis of any portion of real property shall, in the case of a lessor of the property, be increased or diminished on account of income derived by the lessor in respect of the property and excludable from gross income under section 290.08, subdivision 14.

If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of the property was included in gross income of the lessor for any taxable year beginning before January 1, 1943, the basis of each portion of the property shall be properly adjusted for the amount included in gross income.

(9) If the property was acquired by the taxpayer as a transfer of property in exchange for the release of the taxpayer's marital rights, the basis of the property shall be the same as it would be if it were being sold or otherwise disposed of by the person who transferred the property to the taxpayer.

(10) The basis of property subject to the provisions of section 1034 of the Internal Revenue Code of 1954, as amended through December 31, 1979 (relating to the rollover of gain on sale of principal residence) shall be the same as the basis for federal income tax purposes. The basis shall be increased by the amount of gain realized on the sale of a principal residence outside of Minnesota, while a nonresident of this state, which gain was not recognized because of the provisions of section 1034.

History: *1933 c 405 s 18; Ex1937 c 49 s 13; 1943 c 656 s 21; 1955 c 191 s 1; 1957 c 301 s 1; 1957 c 621 s 15; 1979 c 303 art 1 s 17; 1980 c 439 s 3; 1980 c 607 art 1 s 19 (2394-18)*

290.15 GAIN OR LOSS ON DISPOSITION OF PROPERTY, BASIS OF PROPERTY ACQUIRED BEFORE JANUARY 1, 1933.

The basis for determining the gain from the sale or other disposition of property acquired before January 1, 1933, shall be the fair market value thereof on said date except that, if its cost to the taxpayer, adjusted as provided in section 290.12, subdivision 2, for the period prior to January 1, 1933, (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value). The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933, shall be the cost to the taxpayer adjusted as provided in section 290.12, subdivision 2, for the period prior to January 1, 1933. The basis prescribed by section 290.14 for determining gain or loss with respect to property acquired by gift, by gift through an inter vivos transfer in trust, by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purpose of this section.

History: *1933 c 405 s 19; Ex1937 c 49 s 14; 1941 c 550 s 9; 1943 c 656 s 9 (2394-19)*

290.16 DEPRECIATION, BASIS; GAIN OR LOSS ON DISPOSITION OF PROPERTY, HOW TAKEN INTO ACCOUNT IN COMPUTING NET INCOME.

Subdivision 1. **Basis for depreciation.** The basis upon which exhaustion, wear, tear, obsolescence, or depletion is to be allowed in respect to any property shall be the same as provided in sections 290.14 and 290.15 for the purpose of determining the loss or gain on the sale or other disposition thereof.

Subd. 1a. **Inapplicable to individuals, trusts, estates.** With respect to individuals, trusts and estates, the provisions of this section shall not be applicable and gains and losses shall be reported as provided in section 290.01, subdivision 20.

Subd. 2. [Repealed, 1957 c 769 s 8]

Subd. 3. **Definitions.** As used in this section:

(1) The term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include

(a) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(b) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, or amortization allowance provided in section 290.09, subdivision 11, or real property used in the trade or business of the taxpayer, or

(c) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in subparagraph (a);

(2) The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than six months, if and to the extent such gain is taken into account in computing gross income;

(3) The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than six months, if and to the extent such loss is taken into account in computing net income;

(4) The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than six months, if and to the extent such gain is taken into account in computing gross income;

(5) The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than six months, if and to the extent such loss is taken into account in computing net income;

(6) The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year;

(7) The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

(8) The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

(9) The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(10) The term "net capital gain" means the excess of the gains from the sales or exchanges of capital assets over the losses from such sales or exchanges.

(11) The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under subdivision 5. For the purpose of determining losses under this paragraph, amounts which are short-term capital losses under subdivision 6 shall be excluded.

Subd. 4. **Deductions for capital gains.** If for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 percent of the amount of such excess shall be a deduction from gross income.

Subd. 5. **Limitations of losses.** Losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges.

Subd. 6. **Capital loss carrybacks and carryovers.** (a) In General. If a corporation has a net capital loss for any taxable year (hereafter in this paragraph referred to as the "loss year"), the amount thereof shall be

(1) a capital loss carryback to each of the three taxable years preceding the loss year, but only to the extent

(i) such loss is not attributable to a foreign expropriation capital loss, as defined in section 1212(a) (2) of the Internal Revenue Code of 1954, as amended through December 31, 1979 and

(ii) the carryback of such loss does not increase or produce a net operating loss, as defined in section 290.095, for the taxable year to which it is being carried back; and

(2) a capital loss carryover to each of the five taxable years (ten taxable years to the extent such loss is attributable to a foreign expropriation capital loss) succeeding the loss year,

and shall be treated as a short term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the net capital gains for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the net capital gain for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of clause (1), the net capital gains for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(b) Priority of Application. For purposes of clauses (1) and (2), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

Subd. 7. **Bonds, other evidences of indebtedness.** (1) For the purpose of this section, amounts received by the holder upon the retirement of bonds, debentures, notes or certificates or other evidences of indebtedness, which are capital assets in the hands of the taxpayer, and which are issued by any corporation (including those issued by a government or political subdivision thereof), shall be considered as amounts received in exchange therefor (except that in the case of bonds or other evidences of indebtedness issued before January 1, 1955, this paragraph shall apply only to those issued with interest coupons or in registered form, or to those in such form on March 1, 1954).

(2) (a) Except as provided in subparagraph (b), upon sale or exchange of bonds or other evidences of indebtedness as described in paragraph (1), issued after December 31, 1954, held by the taxpayer more than six months, any gain realized which does not exceed

(i) an amount equal to the original issue discount (as defined in paragraph (3)), or

(ii) if at the time of original issue there was no intention to call the bond or other evidence of indebtedness before maturity, an amount which bears the same ratio to the original issue discount (as defined in paragraph (3)) as the number of complete months that the bond or other evidence of indebtedness was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as gain from the sale or exchange of property which is not a capital asset. Gain in excess of such amount shall be considered gain from the sale or exchange of a capital asset held more than 6 months.

(b) Subparagraph (a) shall not apply to obligations the interest on which is not includible in gross income under section 290.08, subdivisions 7 and 8 (relating to certain governmental obligations), or any holder who has purchased the bond or other evidence of indebtedness at a premium.

(c) Double inclusion in income not required. This section shall not require the inclusion of any amount previously includible in gross income.

(3) (a) For purposes of paragraphs (1) and (2), the term "original issue discount" means the difference between the issue price and the stated redemption price at maturity. If the original issue discount is less than one-fourth of one percent of the redemption price at maturity multiplied by the number of complete years to maturity, then the issue discount shall be considered to be zero. For purposes of this paragraph, the term "stated redemption price at maturity" means the amount fixed by the last modification of the purchase agreement and includes dividends payable at that time.

(b) In the case of issues of bonds or other evidences of indebtedness registered with the United States Securities and Exchange Commission, the term "issue price" means the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such bonds or other evidences of indebtedness were sold. In the case of privately placed issues of bonds or other evidence of indebtedness, the issue price of each such bond or other evidence of indebtedness is the price paid by the first buyer of such bond. For purposes of this paragraph, the term "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

(c) In the case of issues of bonds or other evidences of indebtedness registered with the United States Securities and Exchange Commission, the term "date of original issue" means the date on which the issue was first sold to the public at the issue price. In the case of privately placed issues of bonds or other evidences of indebtedness, the term "date of original issue" means the date on which each such bond or other evidence of indebtedness was sold by the issuer.

(4) If

(a) a bond or other evidence of indebtedness issued at any time with interest coupons is purchased after the date of enactment of this act, and

(b) the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such evidence of indebtedness by such purchaser shall be considered as gain from the sale or exchange of property which is not a capital asset to the extent that the market value (determined as of the time of the purchase) of the evidence of indebtedness with coupons attached exceeds the purchase price. If this paragraph and paragraph (2) (a) apply with respect to gain realized on the retirement of any bond, then paragraph (2) (a) shall apply with respect to that part of the gain to which this paragraph does not apply.

Subd. 8. **Holding period.** For the purposes of this section

(1) In determining the period for which the taxpayer has held property received on an exchange there shall be included the period for which he held the property exchanged, if, under the provisions of this chapter, the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after March 1, 1954, if the property exchanged at the time of such exchange was a capital asset as defined in subdivision 3(1) or property described in subdivision 9(1) and (2). For the purposes of this paragraph, an involuntary conversion described in section 290.13, subdivision 5, shall be considered an exchange of the property converted for the property acquired.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of this chapter, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 290.09, subdivision 5, third sentence relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(5) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date upon which the right to acquire was exercised.

(6) In determining the period for which the taxpayer has held a residence, the acquisition of which resulted, under section 290.13, in the nonrecognition of the gain or any part thereof realized from the sale or exchange of another residence, there shall be included the period for which such other residence was held as of the date of such sale or exchange. For purposes of this paragraph, the term "sale or exchange" includes an involuntary conversion occurring after December 31, 1950 and before January 1, 1955.

(7) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands.

Subd. 9. **Property used in trade or business.** (1) For the purposes of this subdivision, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, held for more than six months, and real property used in the trade or business, held for more than six months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Such term also includes livestock, regardless of

age, held by the taxpayer for draft, breeding or dairy purposes, and held by him for 12 months or more from the date of acquisition. Such term does not include poultry.

(2) If, during the taxable year, the recognized gains upon sale or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than six months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than six months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains and losses described therein shall be included only if and to the extent taken into account in computing net income, except that subdivisions 4 and 5 shall not apply.

(B) Losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or capital assets held for more than six months shall be considered losses from a compulsory or involuntary conversion.

In the case of any property used in the trade or business and of any capital asset held for more than 6 months and held for the production of income, this subdivision shall not apply to any loss, in respect of which the taxpayer is not compensated for by insurance in any amount, arising from fire, storm, shipwreck, or other casualty, or from theft.

Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than the adjusted basis without regard to the provisions of section 290.09, subdivision 11, (relating to amortization deduction), shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in this subdivision.

Subd. 10. **Building and loan or savings and loan associations.** Property of a building and loan or savings and loan association acquired in liquidation of a real estate mortgage shall be deemed to be property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

Subd. 11. [Repealed, 1957 c 851 s 2]

Subd. 12. **Gains and losses from short sales.** (a) **Capital assets.** For purposes of this chapter, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

(b) **Short term gains and holding periods.** If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under clause (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 6 months (determined without regard to the effect, under paragraph (2), of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 6 months (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding subdivision 8, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this clause, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(c) **Certain options to sell.** Clause (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This clause shall apply only to options acquired after the date of enactment of Laws 1961, Chapter 501.

(d) **Long term losses.** If on the date of such short sale substantially identical property has been held by the taxpayer for more than 6 months, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 6 months (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding subdivision 13).

(e) **Rules for application of section.** (1) Clauses (b) (1) or (d) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable clause.

(2) For purposes of clauses (b) and (d)

(A) the term "property" includes only stocks and securities (including stocks and securities dealt with on a "when issued" basis), and commodity futures, which are capital assets in the hands of the taxpayer;

(B) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in 1 calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month; and

(C) in the case of a short sale of property by an individual, the term "taxpayer," in the application of this clause and clauses (b) and (d), shall be read as "taxpayer or his spouse"; but an individual who is legally separated from the taxpayer under a decree of divorce or of legal separation shall not be considered as the spouse of the taxpayer.

(3) Where the taxpayer enters into two commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, clauses (b) and (d) shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

(4) (A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236 of the Internal Revenue Code of 1954, as amended through December 31, 1979),

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 6 months, and

(ii) if such short sale is closed more than 20 days after the date on which it was made,

clause (b) (2) shall apply in respect of the holding period of such substantially identical property.

(B) For purposes of subparagraph (A)

(i) the last sentence of clause (b) applies; and

(ii) the term "stock" means any share or certificate of stock in corporation, any bond or other evidence of indebtedness which is convertible into any such share or certificate, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing.

(f) **Arbitrage operations in securities.** In the case of a short sale which had been entered into as an arbitrage operation, to which sale the rule of clause (b) (2) would apply except as otherwise provided in this clause

(1) clause (b) (2) shall apply first to substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, and only to the extent that the quantity sold short exceeds the substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, shall the holding period of any other such identical assets held by the taxpayer be affected;

(2) in the event that assets acquired for arbitrage operations are disposed of in such manner as to create a net short position in assets acquired for arbitrage operations, such net short position shall be deemed to constitute a short sale made on that day;

(3) for the purposes of paragraphs (1) and (2) of this clause the taxpayer will be deemed as of the close of any business day to hold property which he is or will be entitled to receive or acquire by virtue of any other asset acquired for arbitrage operations or by virtue of any contract he has entered into in an arbitrage operation; and

(4) for the purpose of this clause arbitrage operations are transactions involving the purchase and sale of assets for the purpose of profiting from a current difference between the price of the asset purchased and the price of the asset sold, and in which the asset purchased, if not identical to the assets sold, is such that by virtue thereof the taxpayer is, or will be, entitled to acquire assets identical to the assets sold. Such operations must be clearly identified by the taxpayer in his records as arbitrage operations on the day of the transaction or as soon thereafter as may be practicable. Assets acquired for arbitrage operations will include stocks and securities and the right to acquire stocks and securities.

(g) **Hedging transactions.** This subdivision shall not apply in the case of a hedging transaction in commodity futures.

Subd. 13. **Options to buy or sell.** (a) **Treatment of gain or loss.** Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, a privilege or option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option or privilege relates has in the hands of the taxpayer (or would have in the hands of taxpayer if acquired by him).

(b) **Special rule for loss attributable to failure to exercise option.** For purposes of clause (a), if loss is attributable to failure to exercise a privilege or option, the privilege or option shall be deemed to have been sold or exchanged on the day it expired.

(c) **Nonapplication of subdivision.** This subdivision shall not apply to

(1) a privilege or option which constitutes property described in subdivision 3(1) (a);

(2) in the case of gain attributable to the sale or exchange of a privilege or option, any income derived in connection with such privilege or option which, without regard to this subdivision, is treated as other than gain from the sale or exchange of a capital asset;

(3) a loss attributable to failure to exercise an option described in subdivision 12(c); or

(4) gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before December 31, 1960, if in the hands of the taxpayer such privilege or option is a capital asset.

Subd. 14. **Lease, distributor's agreement; cancellation.** Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement.

Subd. 15. **Gain from dispositions of certain depreciable property.** For purposes of this subdivision "depreciable property" shall mean "Section 1245 property" as that phrase is defined in Section 1245(a) (3) of the Internal Revenue Code of 1954, as amended through December 31, 1979.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable property" shall be treated in the same manner as is provided by Section 1245 of the Internal Revenue Code of 1954, as amended through December 31, 1979 and regulations adopted pursuant thereto.

Subd. 16. **Gain from disposition of certain depreciable realty.** For purposes of this subdivision "depreciable realty" shall mean "Section 1250 realty" as that phrase is defined in Section 1250(c) of the Internal Revenue Code of 1954, as amended through December 31, 1979.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable realty" shall be treated in the same manner as is provided by Section 1250 of the Internal Revenue Code of 1954, as amended through December 31, 1979, and regulations adopted pursuant thereto.

History: *1933 c 405 s 20; Ex1937 c 49 s 15; 1941 c 550 s 10; 1943 c 656 s 10; 1945 c 596 s 1; 1947 c 635 s 8; 1949 c 332 s 1,2; 1951 c 679 s 2; 1953 c 141 s 3; 1953 c 653 s 1; 1955 c 166 s 1; 1955 c 167 s 1; 1955 c 169 s 1; 1955 c 198 s 1; 1955 c 267 s 1; 1955 c 412 s 1; 1957 c 769 s 3-6,8,9; 1957 c 851 s 1,2; 1961 c 501 s 9-11,13; 1965 c 487 s 1; 1971 c 758 s 1-3; 1971 c 769 s 2; 1973 c 470 s 1; 1973 c 711 s 3; 1975 c 349 s 16,29; 1977 c 376 s 13; 1978 c 772 s 62; 1980 c 607 art 1 s 32 (2394-20)*

290.165 INTEREST ON REVERSE MORTGAGE LOANS; HOW TAKEN INTO ACCOUNT IN COMPUTING NET INCOME.

Irrespective of the accounting basis used for tax computation purposes, any lender as defined in section 47.58, subdivision 1, who enters into a reverse mortgage loan or purchases an obligation representing a reverse mortgage loan may elect to include as part of its yearly earned income any accrued interest charged to the outstanding loan balance of its borrower pursuant to section 47.58, subdivision 5. This election must be made, if at all, in the first taxable year in which interest is charged by the lender on the outstanding loan balance and, if made, shall be binding on the lender for each subsequent taxable year until the loan is repaid in full. When accrued interest is charged to the outstanding loan balance pursuant to this section it shall be recognized as earned income to the lender on a monthly basis.

History: *1979 c 265 s 4*

290.17 GROSS INCOME, ALLOCATION TO STATE.

Subdivision 1. **Income of resident individuals.** The gross income of individuals during the period of time when they are residents of Minnesota shall be their gross income as defined in section 290.01, subdivision 20, except that the amount of otherwise deductible losses incurred in connection with income derived from sources outside the state shall be reduced by the sum of the taxpayer's items of tax preference as defined in section 57 of the Internal Revenue Code of 1954, as amended through December 31, 1979, which are attributable to losses incurred in connection with sources of income outside the state.

Subd. 1a. **Subsequent adjustment.** When a loss has been reduced by the amount of tax preference items pursuant to subdivision 1, and the taxpayer subsequently sells or otherwise disposes of an asset in relation to which arose an item of tax preference which caused the reduction of the loss, the taxpayer may increase the basis of the asset by the amount of the tax preference item that was used to reduce the loss. If the asset is a depletable asset, the taxpayer may elect to so increase its basis upon disposition or to reduce the amount of otherwise taxable income subsequently produced by that asset by the amount of the tax preference item.

Subd. 2. **Other taxpayers.** In the case of taxpayers not subject to the provisions of subdivision 1, items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(1) The entire income of all resident or domestic taxpayers from compensation for labor or personal services, or from a business consisting principally of the performance of personal or professional services, shall be assigned to this state, and the income of nonresident taxpayers from such sources shall be assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources shall be treated as income from sources without this state;

(2) Income from the operation of a farm shall be assigned to this state if the farm is located within this state and to other states only if the farm is not located in this state. Income and gains received from tangible property not employed in the business of the recipient of such income or gains, and from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, shall be assigned to this state if such property has a situs within it, and to other states only if it has no situs in this state. Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held, whether in trust, or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state; income or gains from intangible personal property wherever held, whether in trust or otherwise shall be assigned to this state if the recipient of such income or gains is domiciled within this state, or if the grantor of any trust is domiciled within this state and such income or gains would be taxable to such grantor under section 290.28 or 290.29;

(3) Income derived from carrying on a trade or business, including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be assigned to this state if the trade or business is conducted wholly within this state, and to other states if conducted wholly without this state. This provision shall not apply to business income subject to the provisions of clause (1);

(4) When a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business, including

income from intangible property employed in such business and including, in the case of a business owned by natural persons, the income imputable to the owner for his services and the use of his property therein, shall be governed, except as otherwise provided in sections 290.35 and 290.36, by the provisions of section 290.19, notwithstanding any provisions of this section to the contrary. This shall not apply to business income subject to the provisions of clause (1). For the purposes of this clause, a trade or business located in Minnesota is carried on partly within and partly without this state if tangible personal property is sold by such trade or business and delivered or shipped to a purchaser located outside the state of Minnesota.

In determining whether or not intangible property is employed in a unitary business carried on partly within and partly without this state so that income derived therefrom is subject to apportionment under section 290.19 the following rules and guidelines shall apply.

(a) Intangible property is employed in a business if the business entity owning intangible property holds it as a means of furthering the business operation of which a part is located within the territorial confines of this state.

(b) Where a business operation conducted in Minnesota, is owned by a business entity which carries on business activity outside of the state different in kind from that conducted within this state, and such other business is conducted entirely outside the state, it will be presumed that the two business operations are unitary in nature, interrelated, connected and interdependent unless it can be shown to the contrary.

(5) In the case of a nonresident who is liable for payment of a penalty for having withdrawn funds from an individual housing account established pursuant to section 290.09, subdivision 30, the amount so withdrawn and for which a deduction was allowed shall be an item of income assignable to this state, and the penalty tax of ten percent shall remain an additional liability of that taxpayer.

(6) For purposes of this section, amounts received by a non-resident from the United States, its agencies or instrumentalities, the Federal Reserve Bank, the state of Minnesota or any of its political or governmental subdivisions, or a Minnesota volunteer fireman's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 405, 408 or 409 of the Internal Revenue Code of 1954, as amended through December 31, 1979, are not considered income derived from carrying on a trade or business or from performing personal or professional services in Minnesota, and are not taxable under this chapter.

(7) All other items of gross income shall be assigned to the taxpayer's domicile.

History: *1933 c 405 s 23; Ex1937 c 49 s 17; 1949 c 734 s 8; 1971 c 152 s 1; 1971 c 730 s 1; 1973 c 650 art 7 s 1; 1977 c 423 art 1 s 11; 1977 c 429 s 63; 1978 c 767 s 18; 1979 c 303 art 1 s 18,19; 1980 c 512 s 6; 1980 c 607 art 1 s 20,21,32 (2394-23)*

290.18 TAXABLE NET INCOME, ADJUSTED GROSS INCOME; COMPUTATION.

Subdivision 1. **Taxable net income.** The taxable net income shall, except insofar as section 290.19 is applicable, be computed by deducting from the gross income assignable to this state under section 290.17 deductions of the kind permitted by section 290.09 in accordance with the following provisions:

(1) Such deductions shall be allowed to the extent that they are connected with and allocable against the production or receipt of such gross income assignable to this state;

(2) That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries and so far as not entering into the computation of the net income assignable to this state under section 290.19, shall be allowed which the taxpayer's gross income from sources within this state, as determined under section 290.17, subdivision 2, clauses (1), (2), (3), and (5), bears to his gross income from all sources, including that entering into the computations provided for by section 290.19; provided that taxes of the kind deductible under section 290.09, subdivision 4, shall, so far as within the description of deductions deductible under this clause, be deductible in their entirety if paid to the state of Minnesota, or any of its subdivisions authorized to impose such taxes, and thereupon be excluded in making the computation of deductions, as in this clause provided.

Subd. 2. **Federal income tax payments and refunds.** (a) The adjusted gross income shall, except insofar as section 290.19 is applicable, be computed by deducting from the gross income assignable to this state under section 290.17, the following deductions:

allowable federal income taxes determined under the provisions of sections 290.09, subdivision 4, 290.10(9) and 290.18.

The deduction enumerated in this subdivision shall be allowed to the extent provided in subdivision 1 and as provided in clauses (b) and (c).

(b) In the case of corporations, national and state banks for taxable years beginning prior to July 1, 1971 and ending subsequent thereto, federal income taxes allowable as a deduction shall be that part of the federal income tax determined by multiplying the federal income tax liability for such taxable year as reflected on the return filed with the Internal Revenue Service by a fraction, the numerator of which is the number of months in the taxable year prior to July 1, 1971 and the denominator which is the number of months in the entire taxable year; provided that if the taxable period is other than a full year the denominator of the fraction shall be the total number of months for which the federal return is filed.

(c) The amount of any additional federal income taxes for 1971 and prior years, where such additional federal income taxes would have been allowed as a deduction from gross income under clause (b) or under prior law, shall be allowed as a deduction in the year in which such additional federal income taxes are paid.

(d) The amount of any overpayment of federal income taxes, whether allowed as a refund or allowed as a credit to any liability, where such overpayment has previously been allowed as a deduction from gross income under Extra Session Laws 1971, Chapter 31, Article 6 or under prior law, shall be added to gross income in the year in which received or credited.

Subd. 3. **Furnish information.** No deduction shall be allowed under this section unless the taxpayer, when requested by the commissioner, shall furnish him with information sufficient to enable him to determine the validity and correctness of such deductions.

History: *1933 c 405 s 24; Ex1937 c 49 s 17; 1949 c 734 s 9; 1951 c 609 s 1; 1955 c 170 s 1; 1957 c 769 s 7; 1961 c 213 art 4 s 4; 1961 c 261 s 1; 1963 c 355 s 9; Ex1971 c 31 art 6 s 7; 1980 c 419 s 16 (2394-23)*

290.19 NET INCOME; ALLOCATION TO STATE, METHODS.

Subdivision 1. **Computation, business conducted partly within state; apportionment.** The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the

gross income of such business, wherever derived, deductions of the kind permitted by section 290.09, so far as connected with or allocable against the production or receipt of such income. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores, or of the manufacture of personal property and the sale of said property within and without the state, the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state is of the total sales wherever made;

(b) The percentage which the total tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in this state during the tax period in connection with such trade or business is of the total tangible property, real, personal, or mixed, wherever located, owned or rented and, used by the taxpayer in connection with such trade or business during the tax period; and,

(c) The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total payrolls paid or incurred in connection with such entire trade or business;

(d) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (1) (a), 15 percent of the percentage determined under clause (1) (b), and 15 percent of the percentage determined under clause (1) (c);

(2) (a) In all other cases the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(1) The percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted;

(2) The percentage which the total tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in this state during the tax period in connection with such trade or business is of the total tangible property, real, personal, or mixed, wherever located, owned, or rented, and used by the taxpayer in connection with such trade or business during the tax period; and

(3) The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total payrolls paid or incurred in connection with such entire trade or business;

(4) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (2) (a) (1), 15 percent of the percentage determined under clause (2) (a) (2), and 15 percent of the percentage determined under clause (2) (a) (3);

(b) If the methods prescribed under clause (2) (a) will not properly reflect taxable net income assignable to the state, there may be used, if practicable and if such use will properly and fairly reflect such income, the percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted; or the separate or segregated accounting method;

(3) The sales, payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used by the taxpayer during the taxable year in respect of which the tax is being computed.

Subd. 1a. **Determination of sales made within this state.** For purposes of this section the following rules shall apply in determining whether or not sales are made within this state.

Sales of tangible personal property are made within this state if the property is delivered or shipped to a purchaser within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point or other conditions of the sale.

Sales made by or through a corporation which is qualified as a domestic international sales corporation under section 992 of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall not be considered to have been made within this state.

Subd. 2. **Application of methods.** The methods prescribed by subdivision 1 shall apply wherever and insofar as the business carried on within this state is an integral part of a business carried on both within and without this state.

Subd. 3. **Application of sections 290.17 and 290.18.** Nothing in this section shall prevent the application of sections 290.17 and 290.18 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without this state.

History: *1933 c 405 s 25; 1939 c 446 s 22; 1941 c 550 s 20; 1953 c 668 s 1; 1967 c 671 s 5; 1969 c 9 s 74; 1969 c 978 s 1; 1973 c 650 art 7 s 2,3; 1975 c 348 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32 (2394-25)*

290.20 NET INCOME; ALLOCATION TO STATE, PETITION FOR OTHER METHODS.

Subdivision 1. The methods prescribed by section 290.19 shall be presumed to determine fairly and correctly the taxpayer's net income allocable to this state. Any taxpayer feeling aggrieved by the application to his case of the methods so prescribed may petition the commissioner for determination of such net income by the use of some other method, including separate accounting. Thereupon, if the commissioner finds that the application of the methods prescribed by section 290.19 will be unjust to the taxpayer, he may allow the use of the methods so petitioned for by the taxpayer, or may determine such net income by other methods if satisfied that such other methods will fairly reflect such net income. A petition within the meaning of this section shall be deemed to have been filed by the taxpayer if the taxpayer in his return uses a method other than the methods prescribed by section 290.19, and if such return shall have attached thereto a statement setting forth the reasons for the use of such other method.

Subd. 2. The methods prescribed by subdivision 1 shall not be applicable wherever and insofar as the taxpayer's business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores.

History: *1933 c 405 s 26; Ex1937 c 49 s 29; 1939 c 446 s 23; 1947 c 635 s 9; 1967 c 671 s 6 (2394-26)*

290.21 CREDITS AGAINST TAXABLE NET INCOME.

Subdivision 1. The taxes imposed by this chapter shall be on or measured by, as the case may be, the taxable net income less the following credits.

Subd. 2. [Repealed, 1980 c 607 art 9 s 2]

Subd. 3. An amount for contribution or gifts made within the taxable year:

(a) to or for the use of the state of Minnesota, or any of its political subdivisions for exclusively public purposes,

(b) to or for the use of any community chest, corporation, organization, trust, fund, association, or foundation located in and carrying on substantially all of its activities within this state, organized and operating exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual,

(c) to a fraternal society, order, or association, operating under the lodge system located in and carrying on substantially all of their activities within this state if such contributions or gifts are to be used exclusively for the purposes specified in subdivision 3(b), or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual, or to an employee stock ownership trust as defined in section 290.01, subdivision 25. Where the beneficiaries of a stock ownership trust include the transferor, his spouse, children, grandchildren, parents, siblings or their children, the amount of the deduction shall be reduced by the product of multiplying said amount by their percentage interest in the trust,

(d) to or for the use of the United States of America for exclusively public purposes, and to or for the use of any community chest, corporation, trust, fund, association, or foundation, organized and operated exclusively for any of the purposes specified in subdivision 3(b) and (c) no part of the net earnings of which inures to the benefit of any private shareholder or individual, but not carrying on substantially all of their activities within this state, in an amount equal to the ratio of Minnesota taxable net income to total net income, provided, however, that for an individual taxpayer, the credit shall be allowed in an amount equal to the ratio of the taxpayer's gross income assignable to Minnesota to the taxpayer's gross income from all sources,

(e) to a political party, as defined in section 200.02, subdivision 7, or a political candidate, as defined in section 210A.01, or a political cause when sponsored by any party or association or committee, as defined in section 210A.01, in a maximum amount not to exceed the following:

(1) contributions made by individual natural persons, $100,

(2) contributions made by a national committeeman, national committeewoman, state chairman, or state chairwoman of a political party, as defined in section 200.02, subdivision 7, $1,000,

(3) contributions made by a congressional district committeeman or committeewoman of a political party, as defined in section 200.02, subdivision 7, $350,

(4) contributions made by a county chairman or a county chairwoman of a political party, as defined in section 200.02, subdivision 7, $150;

(f) in the case of an individual, the total credit against taxable net income allowable hereunder shall not exceed 30 percent of the taxpayer's Minnesota gross income as follows:

(i) the aggregate of contributions made to organizations specified in (a), (b) and (d) shall not exceed ten percent of the taxpayer's Minnesota gross income,

(ii) the total credits under this subparagraph for any taxable year shall not exceed 20 percent of the taxpayer's Minnesota gross income. For purposes of this subparagraph, the credits under this section shall be computed without

regard to any deduction allowed under subparagraph (i) but shall take into account any contributions described in subparagraph (i) which are in excess of the amount allowable as a credit under subparagraph (i);

(g) in the case of a corporation, the total credit against net income hereunder shall not exceed 15 percent of the taxpayer's taxable net income less the credits allowable under this section other than those for contributions or gifts,

(h) in the case of a corporation reporting its taxable income on the accrual basis, if: (A) the board of directors authorizes a charitable contribution during any taxable year, and (B) payment of such contribution is made after the close of such taxable year and on or before the fifteenth day of the third month following the close of such taxable year; then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the commissioner shall by regulations prescribe;

(i) in the case of a contribution or property placed in trust as described in section 170(f)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1979, a credit shall be allowed under this subdivision to the extent that a deduction is allowable for federal income tax purposes.

Subd. 3a. No credit shall be allowed under subdivision 3, clause (e), for any contribution to a candidate as defined in section 10A.01, except a candidate for elective judicial office.

Subd. 4. (a) 85 percent of dividends received by a corporation during the taxable year from another corporation, when the corporate stock with respect to which dividends are paid does not constitute the stock in trade of the taxpayer or would not be included in the inventory of the taxpayer, or does not constitute property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or when the trade or business of the taxpayer does not consist principally of the holding of the stocks and the collection of the income and gains therefrom. The remaining 15 percent shall be allowed if the recipient owns 80 percent or more of all the voting stock of such other corporation, and the dividends were paid from income arising out of business done in this state by the corporation paying such dividends; but if the income out of which the dividends are declared was derived from business done within and without this state, then so much of the remainder shall be allowed as a credit as the amount of the taxable net income of the corporation paying the dividends assignable or allocable to this state bears to the entire net income of the corporation, such rate being determined by the returns under this chapter of the corporation paying such dividends for the taxable year preceding the distribution thereof; the burden shall be on the taxpayer of showing that the amount of remainder claimed as a credit has been received from income arising out of business done in this state,

(b) if the trade or business of the taxpayer consists principally of the holding of the stocks and the collection of the income and gains therefrom, dividends received by a corporation during the taxable year from another corporation, if the recipient owns 80 percent or more of all the voting stock of such other corporation, from income arising out of business done in this state by the corporation paying such dividends; but, if the income out of which the dividends are declared was derived from business done within and without this state, then so much of the dividends shall be allowed as credit as the amount of the taxable net income of the corporation paying the dividends assignable or allocable to this state bears to the entire net income of the corporation, such rate being determined by the returns under this chapter of the corporation paying such dividends for the taxable year preceding the distribution thereof. The burden shall be on the taxpayer of showing that the amount of dividends claimed as a credit has been received from income arising out of business done in this state.

(c) The dividend credit provided in this subdivision shall be allowed only with respect to dividends that are included in a corporation's Minnesota taxable net income for the taxable year.

Subd. 5. To each mutual savings bank organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid or credited during the taxable year of its depositors.

Subd. 6. To each regulated investment company, as that term is defined and limited by section 851 of the Internal Revenue Code of 1954, as amended through December 31, 1979 an amount equal to the interest and dividends paid during the taxable year, and to each building and loan and savings and loan association, an amount equal to the dividends paid during the taxable year to its members as members. For the purposes of this paragraph any dividend or portion thereof declared by a regulated investment company after the close of the taxable year and prior to the time prescribed by law for the filing of its return for the taxable year (including the period of any extension of time granted for filing such return) shall, to the extent the company so elects in such return, be treated as having been paid during such taxable year, but only if distribution of such dividend is actually made to shareholders in the 12 month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration.

Subd. 7. (1) Subject to the limitations provided by clause (2), amounts paid by the taxpayer to maintain an individual (other than a dependent as defined in section 290.06, subdivision 3(3)) as a member of his household during the period that such individual is

(a) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraphs (2), (3), or (4) of subsection (c) of section 170 of the Internal Revenue Code of 1954, as amended through December 31, 1979 to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(b) a fulltime pupil or student in the twelfth or any lower grade at an educational institution (as defined in section 151(e) (4) of the Internal Revenue Code of 1954, as amended through December 31, 1979) located in the United States shall be treated as amounts paid for the use of the organization and shall entitle the taxpayer to a credit under this section in accordance with the provisions and limitations therein defined.

(2) Clause (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in clause (1). For purposes of this subdivision, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

Clause (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in clause (1).

(3) No credit shall be allowed under this subdivision for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in this subdivision except as provided in this subdivision.

History: *1933 c 405 s 27; Ex1937 c 49 s 18; 1939 c 446 s 8; 1941 c 550 s 21; 1943 c 656 s 28; 1947 c 635 s 10; 1949 c 734 s 10; 1951 c 679 s 3; 1953 c 321 s 1; 1955 c 385 s 2; 1955 c 742 s 1; 1955 c 775 s 1; 1961 c 508 s 1; 1963 c 331 s 1; 1965 c 367 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1974 c 157 s 3; 1975 c 284 s 48; 1975 c 349 s 17,29; 1976 c 2 s 106; 1976 c 334 s 14; 1977 c 376 s 13; 1977 c 386 s*

5; 1978 c 463 s 107; 1978 c 766 s 5; 1979 c 303 art 1 s 20; 1980 c 607 art 1 s 32 (2394-27)

NOTE: Laws 1980, Chapter 587, Article 1, Section 38 amends subdivision 3 effective upon the ratification of the constitutional amendment proposed in Laws 1980, Chapter 587, Article 1, Section 1 and shall expire January 1, 1985. See Laws 1980, Chapter 587, Article 1, Section 41. The subdivision, as amended, would read as follows:

"Subd. 3. An amount for contribution or gifts made within the taxable year:

(a) to or for the use of the state of Minnesota, or any of its political subdivisions for exclusively public purposes,

(b) to or for the use of any community chest, corporation, organization, trust, fund, association, or foundation located in and carrying on substantially all of its activities within this state, organized and operating exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual,

(c) to a fraternal society, order, or association, operating under the lodge system located in and carrying on substantially all of their activities within this state if such contributions or gifts are to be used exclusively for the purposes specified in clause (b), or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual, or to an employee stock ownership trust as defined in section 290.01, subdivision 25. Where the beneficiaries of a stock ownership trust include the transferor, his spouse, children, grandchildren, parents, siblings or their children, the amount of the deduction shall be reduced by the product of multiplying said amount by their percentage interest in the trust,

(d) to or for the use of the United States of America for exclusively public purposes, and to or for the use of any community chest, corporation, trust, fund, association, or foundation, organized and operated exclusively for any of the purposes specified in clauses (b) and (c) no part of the net earnings of which inures to the benefit of any private shareholder or individual, but not carrying on substantially all of their activities within this state, in an amount equal to the ratio of Minnesota taxable net income to total net income, provided, however, that for an individual taxpayer, the credit shall be allowed in an amount equal to the ratio of the taxpayer's gross income assignable to Minnesota to the taxpayer's gross income from all sources,

(e) to a political party, as defined in section 200.02, subdivision 7, or a political candidate, as defined in section 210A.01, or a political cause when sponsored by any party or association or committee, as defined in section 210A.01, in a maximum amount not to exceed the following:

(1) contributions made by individual natural persons, $100,

(2) contributions made by a national committeeman, national committeewoman, state chairman, or state chairwoman of a political party, as defined in section 200.02, subdivision 7, $1,000,

(3) contributions made by a congressional district committeeman or committeewoman of a political party, as defined in section 200.02, subdivision 7, $350,

(4) contributions made by a county chairman or a county chairwoman of a political party, as defined in section 200.02, subdivision 7, $150;

(f) in the case of an individual, the total credit against taxable net income allowable hereunder shall not exceed 30 percent of the taxpayer's Minnesota gross income as follows:

(i) the aggregate of contributions made to organizations specified in clauses (a), (b) and (d) shall not exceed ten percent of the taxpayer's Minnesota gross income,

(ii) the total credits under this subparagraph for any taxable year shall not exceed 20 percent of the taxpayer's Minnesota gross income. For purposes of this subparagraph, the credits under this section shall be computed without regard to any deduction allowed under subparagraph (i) but shall take into account any contributions described in subparagraph (i) which are in excess of the amount allowable as a credit under subparagraph (i);

(g) in the case of a corporation, the total credit against net income hereunder shall not exceed 15 percent of the taxpayer's taxable net income less the credits allowable under this section other than those for contributions or gifts,

Provided that no credit shall be allowed to a corporation for contributions or gifts to any individual, association, corporation, committee, trust, fund, foundation, community chest, fraternal society, or organization for use in efforts to promote or defeat the certification of an initiative or referendum proposal or the passage of an initiative or referendum measure which has qualified for the general election ballot,

(h) in the case of a corporation reporting its taxable income on the accrual basis, if: (A) the board of directors authorizes a charitable contribution during any taxable year, and (B) payment of such contribution is made after the close of such taxable year and on or before the fifteenth day of the third month following the close of such taxable year; then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the commissioner shall by regulations prescribe;

(i) in the case of a contribution or property placed in trust as described in section 170(f)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1976, a credit shall be allowed under this subdivision to the extent that a deduction is allowable for federal income tax purposes."

290.22 ESTATES AND TRUSTS, IMPOSITION OF TAX.

The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including:

(1) Income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and,

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

The tax shall be computed upon the net income of the estate or trust and paid by the fiduciary, except as provided in section 290.27, relating to revocable trusts, and section 290.28, relating to income for benefit of the grantor.

History: *1933 c 405 s 28; 1939 c 446 s 9 (2394-28)*

290.23 ESTATES AND TRUSTS; COMPUTATION OF NET INCOME, CREDITS; DEDUCTIONS.

Subdivision 1. **Computation.** The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except as otherwise provided in this section, and sections 290.24 to 290.28.

Subd. 2. **Credit for amounts paid or permanently set aside for a charitable purpose.** (a) There shall be allowed as a credit in lieu of the credit for charitable and other contributions authorized by section 290.21, subdivision 3, any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 290.21, subdivision 3, or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.

(b) The amount otherwise allowable under paragraph (a) as a deduction shall not exceed 20 percent of the taxable income of the trust if the trust has engaged in a prohibited transaction, as defined in paragraph (c).

(c) For purposes of this subdivision, the term "prohibited transaction" means any transaction after December 31, 1956, in which any trust while holding income or corpus which has been permanently set aside or is to be used exclusively for charitable or other purposes described in paragraph (a):

(1) lends any part of such income or corpus, without receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation from such income or corpus, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) uses such income or corpus to make any substantial purchase of securities or any other property, for more than an adequate consideration in money or money's worth, from;

(5) sells any substantial part of the securities or other property comprising such income or corpus, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of such income or corpus to: the creator of such trust; any person who has made a substantial contribution to such trust; a member of a family of an individual who is the creator of the trust or who has made a substantial contribution to the trust; or a corporation controlled by any such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(d) The amount otherwise allowable under paragraph (a) as a deduction shall be limited as provided in paragraph (b) only for taxable years after the taxable year during which the trust is notified by the commissioner that it has

engaged in such transaction, unless such trust entered into such prohibited transaction with the purpose of diverting such corpus or income from the purposes described in paragraph (a), and such transaction involved a substantial part of such corpus or income.

Subd. 3. **Unused loss carryovers and excess deductions on termination available to beneficiaries.** If on the termination of an estate or trust, the estate or trust has

(1) a net operating loss carryover under section 290.095 or a capital loss carryover under section 290.16, subdivision 6; or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subdivision 2) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the commissioner, to the beneficiaries succeeding to the property of the estate or trust.

Subd. 4. **Net operating loss deduction.** The benefit of the deduction for net operating loss allowed by section 290.095 shall be allowed to estates and trusts under regulations prescribed by the commissioner. The benefit of such deduction shall not be allowed to a common trust fund but shall be allowed to the participants in the common trust fund under regulation prescribed by the commissioner.

Subd. 5. **Distributable net income, income, beneficiary; defined.** (1) For purposes of sections 290.22 through 290.28, the term "distributable net income" means, with respect to any taxable year, the taxable net income of the estate or trust computed with the following modifications

(a) No deduction shall be taken under subdivisions 6 and 8 (relating to additional deductions).

(b) Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains, less applicable expenses, are allocated to corpus and are not (1) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (2) paid, permanently set aside, or to be used for the purposes specified in subdivision 2. Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year.

(c) For purposes only of subdivisions 6 and 7 (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable law.

(d) There shall be included any tax-exempt interest to which section 290.08, subdivisions 7 and 8 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of sections 290.09, subdivision 3, and 290.10(9) (relating to disallowance of certain deductions).

If the estate or trust is allowed a credit under subdivision 2, the amount of the modification specified in subparagraph (d) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in subdivision 2 is deemed to consist of items specified in that subparagraph. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the

same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(2) For purposes of this section and section 290.22 the term "income," when not preceded by the words "taxable net," "distributable net," "undistributed net," or "gross," means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable law shall not be considered income.

(3) For purposes of sections 290.22 through 290.28, the term "beneficiary" includes heir, legatee, devisee.

Subd. 6. **Deduction for trusts distributing current income only.** (1) In the case of any trust the terms of which

(a) provide that all of its income is required to be distributed currently, and

(b) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in subdivision 2,

there shall be allowed as a deduction in computing the taxable net income of the trust the amount of the income for the taxable year which is required to be distributed currently. This subdivision shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in subparagraph (a).

(2) If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.

Subd. 7. **Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only.** (1) Subject to paragraph (2), the amount of income for the taxable year required to be distributed currently by a trust described in subdivision 6 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

(2) The amounts specified in paragraph (1) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the commissioner.

(3) If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this subdivision shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year.

Subd. 8. **Deduction for estates and trusts accumulating income or distributing corpus.** (1) In any taxable year there shall be allowed as a deduction in computing the taxable net income of an estate or trust (other than a trust to which subdivisions 6 and 7 apply), the sum of

(a) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year): and

(b) any other amounts properly paid or credited or required to be distributed for such taxable year:

but such deduction shall not exceed the distributable net income of the estate or trust.

(2) The amount determined under paragraph (1) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the credit allowed under subdivision 2) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the commissioner.

(3) No deduction shall be allowed under paragraph (1) in respect of any portion of the amount allowed as a deduction under that paragraph (without regard to this paragraph) which is treated under paragraph (2) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

Subd. 9. **Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.** (1) Subject to paragraph 2, there shall be included in the gross income of a beneficiary to whom an amount specified in subdivision 8(1) is paid, credited, or required to be distributed (by an estate or trust described in subdivision 8), the sum of the following amounts:

(a) The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the credit allowed by subdivision 2, relating to credit for charitable, etc. purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this subdivision, the phrase "the amount of income for the taxable year required to be distributed currently" includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(b) All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of

(i) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(ii) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distrib-

utable net income (reduced by the amounts specified in (1)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

(2) The amounts determined under paragraph (1) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the credit allowed under subdivision 2) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the commissioner. In the application of this paragraph to the amount determined under subparagraph (a) of paragraph (1), distributable net income shall be computed without regard to any portion of the credit under subdivision 2 which is not attributable to income of the taxable year.

Subd. 10. **Special rules applicable to subdivisions 8 and 9.** (1) There shall not be included as amounts falling within subdivision 8(1) or subdivision 9(1)

(a) Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(b) Any amount paid or permanently set aside or otherwise qualifying for the credit provided in subdivision 2.

(c) Any amount paid, credited, or distributed in the taxable year, if subdivision 6 or subdivision 8 applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

(2) If within the first 65 days of any taxable year of a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year. This paragraph (2) shall apply only to a trust

(a) which was in existence prior to January 1, 1956,

(b) which, under the terms of its governing instrument, may not distribute in any taxable year amounts in excess of the income of the preceding taxable year, and

(c) on behalf of which the fiduciary elects to have this paragraph (2) apply.

The election authorized by subparagraph (c) shall be made for the first taxable year to which sections 290.22 to 290.28 are applicable in accordance with such regulations as the commissioner shall prescribe and shall be made not later than the time prescribed by law for filing the return for such year (including extensions thereof). If such election is made with respect to a taxable year, this paragraph (2) shall apply to all amounts paid or credited within the first 65 days of all subsequent taxable years of such trust.

(3) For the sole purpose of determining the amount of distributable net income in the application of subdivisions 8 and 9, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. The existence of such substantially separate and independent shares and the manner of

treatment as separate trusts, including the application of subdivisions 11 to 14, shall be determined in accordance with regulations prescribed by the commissioner.

Subd. 11. **Definitions applicable to subdivisions 11 to 14.** For purposes of subdivisions 11 to 14

(1) The term "undistributed net income" for any taxable year means the amount by which distributable net income of the trust for such taxable year exceeds the sum of

(a) the amounts for such taxable year specified in subdivision 8(1) (a) and (b); and

(b) the amount of taxes imposed on the trust.

(2) The term "accumulation distribution" for any taxable year of the trust means the amount (if in excess of $2,000) by which the amounts specified in subdivision 8(1) (b) for such taxable year exceed distributable net income reduced by the amounts specified in subdivision 8(1) (a). For purposes of this paragraph, the amount specified in subdivision 8(1) (b) shall be determined without regard to subdivision 12 and shall not include

(a) amounts paid, credited, or required to be distributed to a beneficiary as income accumulated before the birth of such beneficiary or before such beneficiary attains the age of 18;

(b) amounts properly paid or credited to a beneficiary to meet the emergency needs of such beneficiary;

(c) amounts properly paid or credited to a beneficiary upon such beneficiary's attaining a specified age or ages if (1) the total number of such distributions cannot exceed 4 with respect to such beneficiary, (2) the period between each such distribution to such beneficiary is 4 years or more, and (3) as of January 1, 1956, such distributions are required by the specific terms of the governing instrument; and

(d) amounts properly paid or credited to a beneficiary as a final distribution of the trust if such final distribution is made more than 9 years after the date of the last transfer to such trust.

(3) The term "taxes imposed on the trust" means the amount of the taxes which are imposed for any taxable year on the trust under this chapter (without regard to subdivisions 11 to 14) and which, under regulations prescribed by the commissioner, are properly allocable to the undistributed portion of the distributable net income. The amount determined in the preceding sentence shall be reduced by any amount of such taxes allowed, under subdivisions 13 and 14, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year.

(4) The term "preceding taxable year" does not include any taxable year of the trust to which sections 290.22 to 290.28 do not apply. In the case of a preceding taxable year with respect to which a trust qualifies (without regard to subdivisions 11 to 14) under the provisions of subdivisions 6 and 7, for purposes of the application of subdivisions 11 to 14 to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the commissioner, be treated as a trust to which subdivisions 8, 9 and 10 apply.

Subd. 12. **Accumulation distribution allocated to five preceding years.** (1) In the case of a trust which for a taxable year beginning after December 31, 1956, is subject to subdivisions 8, 9 and 10, the amount of the accumulation distribution of such trust for such taxable year shall be deemed to be an amount within the meaning of subdivision 8(1) (b) distributed on the last day of each of the 5 preceding taxable years to the extent that such amount exceeds the total of any undistributed net income for any taxable years intervening between the taxable

year with respect to which the accumulation distribution is determined and such preceding taxable year. The amount deemed to be distributed in any preceding taxable year under the preceding sentence shall not exceed the undistributed net income of such preceding taxable year. For purposes of this paragraph, undistributed net income for each of such 5 preceding taxable years shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(2) If any portion of an accumulation distribution for any taxable year is deemed under paragraph (1) to be an amount within the meaning of subdivision 8(1) (b) distributed on the last day of any preceding taxable year, and such portion of such accumulation distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of subdivision 8(1) (b). Such additional amount shall be equal to the taxes imposed on the trust for such preceding taxable year. For purposes of this paragraph, the undistributed net income and the taxes imposed on the trust for such preceding taxable year shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(3) If any portion of an accumulation distribution for any taxable year is deemed under paragraph (1) to be an amount within the meaning of subdivision 8(1) (b) distributed on the last day of any preceding taxable year and such portion of the accumulation distribution is less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of subdivision 8(1) (b). Such additional amount shall be equal to the taxes imposed on the trust for such taxable year multiplied by the ratio of the portion of the accumulation distribution to the undistributed net income of the trust for such year. For purposes of this paragraph, the undistributed net income and the taxes imposed on the trust for such preceding taxable year shall be computed without regard to the accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

Subd. 13. **Denial of refund to trusts.** The amount of taxes imposed on the trust under this chapter, which would not have been payable by the trust for any preceding taxable year had the trust in fact made distributions at the times and in the amounts deemed under subdivision 12, shall not be refunded or credited to the trust, but shall be allowed as a credit under subdivision 14(2) against the tax of the beneficiaries who are treated as having received the distributions. For purposes of the preceding sentence, the amount of taxes which may not be refunded or credited to the trust shall be an amount equal to the excess of (1) the taxes imposed on the trust for any preceding taxable year (computed without regard to the accumulation distribution for the taxable year) over (2) the amount of taxes for such preceding taxable year imposed on the undistributed portion of distributable net income of the trust for such preceding taxable year after the application of subdivisions 11 to 14 on account of the accumulation distribution determined for such taxable year.

Subd. 14. **Treatment of amounts deemed distributed in preceding years.** (1) The total of the amounts which are treated under subdivision 12 as having been distributed by the trust in preceding taxable year shall be included in the income of a beneficiary or beneficiaries of the trust when paid, credited, or required to be distributed to the extent that such total would have been included in the income of such beneficiary or beneficiaries under subdivision 9(1) (b) and (2) if such total had been paid to such beneficiary or beneficiaries on the last day of such preceding taxable year. The portion of such total included under the preceding sentence in the income of any beneficiary shall be based upon the same

ratio as determined under the second sentence of subdivision 9(1) (b) for the taxable year in respect of which the accumulation distribution is determined, except that proper adjustment of such ratio shall be made, in accordance with regulations prescribed by the commissioner, for amounts which fall within subparagraphs (a) to (d) of paragraph (2) of subdivision 11. The tax of the beneficiaries attributable to the amounts treated as having been received on the last day of such preceding taxable year of the trust shall not be greater than the aggregate of the taxes attributable to those amounts had they been included in the gross income of the beneficiaries on such day in accordance with subdivision 9(1) (b) and (2).

(2) The tax imposed on beneficiaries under this chapter shall be credited with a pro rata portion of the taxes imposed on the trust under this chapter for such preceding taxable year which would not have been payable by the trust for such preceding taxable year had the trust in fact made distributions to such beneficiaries at the times and in the amounts specified in subdivision 12.

Subd. 15. **Accumulations after December 31, 1976.** Notwithstanding the provisions of subdivisions 11, 12, 13, and 14, the provisions of sections 665 to 668 of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall be applicable to all accumulation distributions made by a trust after December 31, 1976.

Subd. 16. [Repealed, 1980 c 607 art 1 s 33]

History: *1939 c 446 s 10; 1941 c 500 s 12; 1943 c 656 s 12; 1945 c 604 s 29; 1957 c 932 s 1; 1973 c 725 s 52; 1977 c 376 s 6; 1979 c 303 art 1 s 21; 1980 c 607 art 1 s 32 (2394-28a)*

290.24 ESTATES OR TRUSTS, PERSONAL CREDIT.

An estate shall be allowed the same personal credit against the tax as is allowed to a single person under section 290.06, subdivision 3c, clause (1).

History: *1939 c 446 s 10; 1941 c 550 s 23; 1978 c 674 s 32 (2394-28b)*

290.25 TRUSTS; GRANTOR TREATED AS SUBSTANTIAL OWNER.

Subdivision 1. **Trust income, deductions, and credits attributable to grantors and others as substantial owners.** Where it is specified in this section and sections 290.27 and 290.28 that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable net income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable net income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to section 290.23. No items of a trust shall be included in computing the taxable net income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 290.01, subdivision 20 (relating to definition of gross income) or any other provision of this chapter, except as specified in this section and sections 290.27 and 290.28.

Subd. 2. **Definitions and rules.** (1) For purposes of this section and sections 290.27 and 290.28, the term "adverse party" means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(2) For purposes of this section and sections 290.27 and 290.28, the term "nonadverse party" means any person who is not an adverse party.

(3) For purposes of this section and sections 290.27 and 290.28, the term "related or subordinate party" means any nonadverse party who is

(a) the grantor's spouse if living with the grantor:

(b) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation of any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subdivisions 4 and 5, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(4) A person shall be considered to have a power described in this section and sections 290.27 and 290.28 even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power.

Subd. 3. **Reversionary interests.** (1) The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust.

(2) Paragraph (1) shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of the trust, irrevocably payable for a period of at least 2 years (commencing with the date of the transfer) to a designated beneficiary, which beneficiary is an organization exempt from taxation under the provisions of section 290.05 and is one of the following:

(a) a church or a convention or association of churches, or

(b) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, or

(c) an organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research or agricultural research.

(3) The grantor shall not be treated under paragraph (1) as the owner of any portion of a trust where his reversionary interest in such portion is not to take effect in possession or enjoyment until the death of the person or persons to whom the income therefrom is payable.

(4) Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effected and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

Subd. 4. **Power to control beneficial enjoyment.** (1) The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(2) Paragraph (1) shall not apply to the following powers regardless of by whom held:

(a) A power described in section 290.28, subdivision 1(2) to the extent that the grantor would not be subject to tax under that section.

(b) A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under subdivision 3 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(c) A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(d) A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 290.21, subdivision 3, (relating to charitable contributions).

(e) A power to distribute corpus either (1) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this subparagraph (e) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(f) A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable (1) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or (2) on termination of the trust, or in conjunction with a distribution of corpus which augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this subparagraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(g) A power exercisable only during (1) the existence of a legal disability of any current income beneficiary, or (2) the period during which any income beneficiary shall be under the age of 18 years, to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this subparagraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries

designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(h) A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(3) Paragraph (1) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor

(a) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(b) to pay out of corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this paragraph (3) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(4) Paragraph (1) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (2) (f) or (g) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

Subd. 5. **Administrative powers.** The grantor shall be treated as the owner of any portion of a trust in respect of which

(1) A power exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.

(2) A power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

(3) The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor.

(4) A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one or more of the following powers: (a) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (b) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to

the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (c) a power to reacquire the trust corpus by substituting other property of an equivalent value.

History: *1939 c 446 s 10; 1957 c 846 s 1; 1965 c 51 s 60; 1973 c 725 s 53 (2394-28c)*

290.26 EMPLOYEES' TRUST, ANNUITY PLANS.

Subdivision 1. **Income of certain trusts not taxed.** A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall not be taxable under section 290.22 and no other provisions of this act shall apply with respect to such trust or its beneficiary if such trust or beneficiary comes within the provisions of sections 401 and 402 of the Internal Revenue Code of 1954, as amended through December 31, 1979 as adapted to the provisions of this chapter under regulations issued by the commissioner of revenue.

Subd. 2. **Employer contributions.** Contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan or to a simplified employee pension shall be allowed as a deduction in accordance with the provisions of Section 404 or 408(k) of the Internal Revenue Code of 1954, as amended through December 31, 1979 as adapted to the provisions of this chapter under rules issued by the commissioner of revenue.

Subd. 2a. **Employer stock ownership trust contributions.** All contributions of an employer to an employee stock ownership trust as defined by section 290.01, subdivision 25, shall be allowed as a deduction in accordance with the provisions of section 404 of the Internal Revenue Code of 1954, as amended through December 31, 1979, except that the limitation contained therein on the amount of contributions allowed as a deduction shall not be applicable and in lieu thereof a limitation of 30 percent shall apply. An employer who in any year claims a deduction under this subdivision shall not in that year claim a deduction under section 290.21.

Subd. 3. **Distributions.** Distributions received by a beneficiary from a trust or annuity plan of the kind described in subdivision 1 or 2 shall be treated in accordance with the provisions of section 290.08, subdivision 4, and sections 402 and 403 of the Internal Revenue Code of 1954, as amended through December 31, 1979 as adapted to the provisions of this chapter by regulations issued by the commissioner of revenue.

Subd. 4. **Effective date.** The provisions of subdivisions 1, 2 and 3 shall be applicable to the same taxable years as provided in section 290.08, subdivision 4, as adapted to the provisions of this chapter by regulations issued by the commissioner of revenue.

Subd. 5. **Custodial account; trust.** A custodial account within the meaning of section 401(f) or section 403(b)(7) of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall be treated as a trust under this section.

Subd. 6. **Individual retirement account; exemption.** Any individual retirement account that is exempt from taxation under the provisions of section 408 of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall also be exempt from taxation under the provisions of this chapter.

Subd. 7. **Tax free rollovers of distribution.** The provisions of P.L. 94-267 (relating to tax free rollovers of distributions from employee retirement plans in the event of plan terminations) shall be applicable with respect to such distributions made to an employee on or after July 4, 1974.

History: *1939 c 446 s 10; 1945 c 604 s 18; 1957 c 766 s 1; 1971 c 769 s 2; 1973 c 582 s 3; 1973 c 711 s 3; 1974 c 157 s 4; 1975 c 349 s 27; 1976 c 2 s 108; 1977 c 376 s 7,13; 1980 c 607 art 1 s 22,32 (2394-28d)*

290.27 REVOCABLE TRUSTS, INCOME TAXABLE TO GRANTOR.

(1) The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of sections 290.22 to 290.28, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

(2) Paragraph (1) shall not apply to a power the exercise of which can only effect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under section 290.25, subdivision 3, if the power were a reversionary interest. But the grantor may be treated as the owner after the expiration of such period unless the power is relinquished.

History: *1939 c 446 s 10; 1957 c 759 s 1 (2394-28e)*

290.28 ESTATES AND TRUSTS; INCOME FOR BENEFIT OF GRANTOR, OTHERS TREATED AS SUBSTANTIAL OWNER, DIVORCE AND SEPARATION PAYMENTS.

Subdivision 1. **Income for benefit of grantor.** (1) The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 290.25, subdivision 4, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be

(a) distributed to the grantor;

(b) held or accumulated for future distribution to the grantor; or

(c) applied to the payment of premiums on policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for a purpose specified in section 290.21, subdivision 3, (relating to charitable contributions)).

This paragraph (1) shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that the grantor would not be treated as the owner under section 290.25, subdivision 3 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(2) Income of a trust shall not be considered taxable to the grantor under paragraph (1) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of section 290.23, subdivision 8(1) (b) and shall be taxed to the grantor under section 290.23, subdivision 9.

Subd. 2. **Person other than grantor treated as substantial owner.** (1) A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(a) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(b) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would,

within the principles of sections 290.25, 290.27, and subdivision 1 of this section, subject a grantor of a trust to treatment as the owner thereof.

(2) Paragraph (1) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust is otherwise treated as the owner under sections 290.25, 290.27, and subdivision 1 of this section.

(3) Paragraph (1) shall not apply to a power which enables such person, in the capacity of trustee or co-trustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of section 290.23, subdivision 8(1) (b) and shall be taxed to the holder of the power under section 290.23, subdivision 9.

(4) Paragraph (1) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

Subd. 3. **Income of an estate or trust in case of divorce.** (1) There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of legal separation (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this subdivision, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this chapter, be includible in the gross income of such husband. This paragraph shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(2) For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom paragraph (1) applies, such wife shall be considered as the beneficiary specified in sections 290.22 to 290.28. A periodic payment of maintenance, to any portion of which sections 290.22 to 290.28 applies, shall be included in the gross income of the beneficiary in the taxable year in which under sections 290.22 to 290.28 such portion is required to be included.

History: *1939 c 446 s 10; 1949 c 734 s 11; 1957 c 760 s 1; 1978 c 772 s 62; 1980 c 419 s 17 (2394-28f)*

290.281 COMMON TRUST FUND.

Subdivision 1. **Not taxed; defined.** A common trust fund shall not be subject to taxation under this chapter and for this purpose the term "common trust fund" means a fund maintained by a bank (taxable under section 290.361) exclusively for the collective investment and reinvestment of moneys contributed thereto by it or by another bank which is owned or controlled by a corporation which owns or controls such bank in a capacity as a trustee, personal representative or guardian; and in conformity with the rules and regulations prevailing from time to time of the board of governors of the federal reserve system pertaining to the collective investment of trust funds by national banks.

Subd. 2. **Net income, computation.** The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual except that (1) the gains and losses from sales or exchanges of capital assets shall be segregated and shall not enter into the computation of ordinary net income or net loss; and (2) no credit provided in section 290.21, subdivision 3, for contributions shall be allowed.

Subd. 3. **Income to participants.** Each participant in the common trust fund in computing its net income shall include, whether or not distributed and whether or not distributable, (1) its proportionate share of the ordinary net income or net loss of the common trust fund; and (2) as a part of its gains and losses from sales or exchanges of capital assets, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets.

Subd. 4. **Admission or withdrawal of participants.** No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by a participant.

Subd. 5. **Return required of bank.** Every bank maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and deductions allowed by this section, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return required to be filed by the bank under section 290.361.

Subd. 6. **Different taxable years.** If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing net income of the participant for its taxable year, shall be based upon the net income of the common trust fund for its taxable year ending within the taxable year of the participant.

History: *1945 c 604 s 14; 1974 c 6 s 2; 1975 c 349 s 30*

290.29 TRANSFEREES, FIDUCIARIES; LIABILITY, TIME LIMIT, NOTICE.

Subdivision 1. **Liability, amounts.** The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter, including all provisions of the chapter for the collection of taxes:

(1) The liability, at law or in equity, of a transferee of property of a taxpayer in respect of the tax, including interest, additional amounts, and additions to the tax provided by law, imposed upon the taxpayer by this chapter;

(2) The liability of a fiduciary under section 290.54 in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

Subd. 2. **Time limit for assessment, collection; generally.** The period of limitation for assessment and collection of any such liability of the transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the taxpayer, and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the taxpayer.

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three and one-half years after the expiration of the period of limitation for assessment against the taxpayers and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the preceding transferee, but only if within four years after the expiration of the period of limitation for bringing an action against the taxpayer; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding, and the period of limitation for collection by action shall expire one year after the said liability is assessed.

(3) In the case of the liability of a fiduciary, the tax may be assessed not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later, and may be collected by action brought within one year after assessment.

Subd. 3. **Time limit for assessment where taxpayer deceased, corporate existence terminated; notice of liability.** For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

In the absence of notice to the commissioner under section 290.30 of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purpose of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

History: *1933 c 405 s 29; 1939 c 446 s 11; 1943 c 656 s 13 (2394-29)*

290.30 FIDUCIARIES, DUTY TO PAY TAX.

Upon notice to the commissioner that any person is acting in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter, except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer, until notice is given that the fiduciary capacity has terminated.

Upon notice to the commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 290.29, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section, except that the liability shall be collected from the estate of such person, until notice is given that the fiduciary capacity has terminated.

Notice under this section shall be given in accordance with regulations prescribed by the commissioner.

History: *1939 c 446 s 12 (2394-29a)*

290.31 PARTNERSHIPS; INDIVIDUAL LIABILITY OF PARTNERS.

Subdivision 1. **Partners, not partnership, subject to tax.** A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

Subd. 2. **Income and credits of partner.** (1) In determining his income tax, each partner shall take into account separately his distributive share of the partnership's

(a) gains and losses from sales or exchanges of capital assets held for not more than six months,

(b) gains and losses from sales or exchanges of capital assets held for more than six months,

(c) gains and losses from sales or exchanges of property described in section 290.16, subdivision 9(1) and (2) (relating to certain property used in a trade or business and involuntary conversions),

(d) charitable contributions (as defined in section 290.21, subdivision 3),

(e) dividends with respect to which there is provided a credit under section 290.21,

(f) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the commissioner, and

(g) taxable net income or loss, exclusive of items requiring separate computation under other subparagraphs of this paragraph (1).

(2) The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (a) through (f) of paragraph (1) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(3) In any case where it is necessary to determine the gross income of a partner for purposes of this chapter, such amount shall include his distributive share of the gross income of the partnership.

Subd. 3. **Partnership computations.** The taxable net income of a partnership shall be computed in the same manner as in the case of an individual except that

(1) the items described in subdivision 2(1) shall be separately stated, and

(2) the following deductions and credits shall not be allowed to the partnership:

(a) the standard deduction provided in section 290.09, subdivision 15,

(b) the credit for charitable contributions provided in section 290.21, subdivision 3,

(c) the net operating loss deduction provided in section 290.095, and

(d) the additional itemized deductions for individuals provided in section 290.09, as adapted to the provisions of this subdivision under regulations issued by the commissioner.

Any election affecting the computation of taxable net income derived from a partnership shall be made by the partnership.

Subd. 4. **Partner's distributive share.** (1) A partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this subdivision, be determined by the partnership agreement.

(2) A partner's distributive share of any item of income, gain, loss, deduction, or credit shall be determined in accordance with his distributive share of taxable net income or loss of the partnership, as described in subdivision 2(1)(g), for the taxable year, if

(a) the partnership agreement does not provide as to the partner's distributive share of such item, or

(b) the principal purpose of any provision in the partnership agreement with respect to the partner's distributive share of such item is the avoidance or evasion of any tax imposed by this chapter.

(3) (a) In determining a partner's distributive share of items described in subdivision 2(1), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner shall, except to the extent otherwise provided in subparagraph (b) or (c), be allocated among the partners in the same manner as if such property had been purchased by the partnership.

(b) If the partnership agreement so provides, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner shall, under regulations prescribed by the commissioner, be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

(c) If the partnership agreement does not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership shall be determined as though such undivided interests had not been contributed to the partnership. This subparagraph shall apply only if all the partners had undivided interests in such property prior to contribution and their interests in the capital and profits of the partnership correspond with such undivided interests.

(4) A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(5) (a) A person shall be recognized as a partner for purposes of this chapter if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(b) In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(c) For purposes of this subdivision, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital.

(d) For the purposes of this section, the "family" of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

Subd. 5. **Determination of basis of partner's interest.** The adjusted basis of a partner's interest in a partnership shall, except as provided in the last paragraph of this subdivision, be the basis of such interest determined under subdivision 10 (relating to contributions to a partnership) or subdivision 19 (relating to transfers of partnership interests)

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of

(a) net income of the partnership as determined under subdivision 3(1) and (2),

(b) income of the partnership exempt from tax under this chapter, and

(2) decreased (but not below zero) by distributions by the partnership as provided in subdivision 14 and by the sum of his distributive share for the taxable year and prior taxable years of

(a) losses of the partnership, and

(b) expenditures of the partnership not deductible in computing its taxable net income and not properly chargeable to capital account.

The commissioner shall prescribe by regulations the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

Subd. 6. **Taxable years of partner and partnership.** (1) In computing the taxable net income of a partner for a taxable year, the inclusions required by subdivision 2 and subdivision 7(4) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

(2) The taxable year of a partnership shall be determined as though the partnership were a taxpayer. A partnership may not change to, or adopt, a taxable year other than that of all its principal partners unless it establishes, to the satisfaction of the commissioner, a business purpose therefor.

(3) A partner may not change to a taxable year other than that of a partnership in which he is a principal partner unless he establishes, to the satisfaction of the commissioner, a business purpose therefor.

(4) For the purpose of paragraphs (2) and (3), a principal partner is a partner having an interest of five percent or more in partnership profits or capital.

(5) Except in the case of a termination of a partnership and except as provided in paragraphs (6) and (7), the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership.

(6) The taxable year of a partnership shall close

(a) with respect to a partner who sells or exchanges his entire interest in a partnership, and

(b) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year.

Such partner's distributive share of items described in subdivision 2(1) for such year shall be determined, under regulations prescribed by the commissioner, for the period ending with such sale, exchange, or liquidation.

(7) The taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under paragraph (2)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced, but such partner's distributive share of items described in subdivision 2(1) shall be determined by taking into account his varying interests in the partnership during the taxable year.

Subd. 7. **Transactions between partner and partnership.** (1) If a partner engages in a transaction with a partnership other than in his capacity as a

member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between

(a) a partnership and a partner owning, directly or indirectly, more than 50 percent of the capital interests, or the profits interest, in such partnership, or

(b) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(3) In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 290.16, subdivision 3(1)

(a) between a partnership and a partner owning, directly or indirectly, more than 80 percent of the capital interest, or profits interest, in such partnership, or

(b) between two partnerships in which the same persons own, directly or indirectly, more than 80 percent of the capital interests or profits interests,

Any gain recognized shall be considered as gain from the sale or exchange of property other than a capital asset.

(4) To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 290.01, subdivision 20 (relating to gross income) and section 290.09, subdivision 2, (relating to trade or business expenses).

Subd. 8. **Continuation of partnership.** (1) For purposes of this section, an existing partnership shall be considered as continuing if it is not terminated.

(2) For purposes of paragraph (1), a partnership shall be considered as terminated only if

(a) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(b) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

(3) In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this subdivision, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(4) In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this subdivision, be considered a continuation of the prior partnership.

Subd. 9. **Nonrecognition of gain or loss on contribution.** No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Subd. 10. **Basis of contributing partner's interest.** The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution.

Subd. 11. **Basis of property contributed to partnership.** The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution.

Subd. 12. **Extent of recognition of gain or loss on distribution.** In the case of a distribution by a partnership to a partner

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (a) or (b) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of

(a) any money distributed, and

(b) the basis to the distributee, as determined under subdivision 13, of any unrealized receivables (as defined in subdivision 21(3)) and inventory (as defined in subdivision 21(4) (b)).

Any gain or loss recognized under the preceding sentence shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

This subdivision shall not apply to the extent otherwise provided by subdivision 17 (relating to payments to a retiring partner or a deceased partner's successor in interest) and subdivision 21 (relating to unrealized receivables and inventory items).

Subd. 13. **Basis of distributed property other than money.** (1) The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, except as provided in paragraph (2), be its adjusted basis to the partnership immediately before such distribution.

(2) The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(3) The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(4) The basis of distributed properties to which paragraph (2) or paragraph (3) is applicable shall be allocated

(a) first to any unrealized receivables (as defined in subdivision 21(3)) and inventory items (as defined in subdivision 21(4) (b)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

(b) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership.

(5) For purposes of paragraphs (1), (2), (3) and (4), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in subdivision 24 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within two years after such transfer, may elect, under regulations prescribed by the commissioner, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in subdivi-

sion 20(2) were in effect with respect to the partnership property. The commissioner may by regulations require the application of this paragraph in the case of a distribution to a transferee partner, whether or not made within two years after the transfer, if at the time of the transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

(6) This subdivision shall not apply to the extent that a distribution is treated as a sale or exchange of property under subdivision 21(2) (relating to unrealized receivables and inventory items).

Subd. 14. **Basis of distributee partner's interest.** In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by

(1) the amount of any money distributed to such partner, and

(2) the amount of the basis to such partner of distributed property other than money, as determined under subdivision 13.

Subd. 15. **Optional adjustment to basis of undistributed partnership property.** (1) The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in subdivision 24 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership.

(2) In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in subdivision 24 is in effect, shall

(a) increase the adjusted basis of partnership property by the amount of any gain recognized to the distributee partner with respect to such distribution under subdivision 12(1), and in the case of distributed property to which subdivision 13(2) or (3) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by subdivision 13(5)) over the basis of the distributed property to the distributee, as determined under subdivision 13, or

(b) decrease the adjusted basis of partnership property by the amount of any loss recognized to the distributee partner with respect to such distribution under subdivision 12(2), and in the case of distributed property to which subdivision 13(3) applies, the excess of the basis of the distributed property to the distributee, as determined under subdivision 13, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by subdivision 13(5)).

(3) The allocation of basis among partnership properties where paragraph (2) is applicable shall be made in accordance with the rules provided in subdivision 25.

Subd. 16. **Character of gain or loss on disposition of distributed property.** (1) Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in subdivision 21(3)) distributed by a partnership, shall be considered gain or loss from the sale or exchange of property other than a capital asset.

(2) Gain or loss on the sale or exchange by a distributee partner of inventory item (as defined in subdivision 21(4) (b)) distributed by a partnership shall, if sold or exchanged within five years from the date of the distribution, be considered gain or loss from the sale or exchange of property other than a capital asset.

(3) In determining the period for which a partner has held property received in distribution from a partnership (other than for purposes of paragraph (2) above), there shall be included the holding period of the partnership, as determined under section 290.16, subdivision 8, with respect to such property.

Subd. 17. **Payments to a retiring partner or a deceased partner's successor in interest.** (1) Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in paragraph (2), be considered

(a) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(b) as a guaranteed payment described in subdivision 7(4) if the amount thereof is determined without regard to the income of the partnership.

(2) (a) Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in subparagraph (b)) are determined, under regulations prescribed by the commissioner, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under paragraph (1).

(b) For purposes of paragraph (2), payments in exchange for an interest in partnership property shall not include amounts paid for unrealized receivables of the partnership (as defined in subdivision 21(3)), or good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

Subd. 18. **Recognition and character of gain or loss on sale or exchange.** In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in subdivision 21 (relating to unrealized receivables and inventory items which have appreciated substantially in value).

Subd. 19. **Basis of transferee partner's interest.** The basis of an interest in a partnership acquired other than by contribution shall be determined under sections 290.12, 290.14, 290.15 and 290.16.

Subd. 20. **Optional adjustment to basis of partnership property.** (1) The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by subdivision 24 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership.

(2) In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in subdivision 24 is in effect shall

(a) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(b) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the commissioner, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of an agreement described in subdivision 4(3) (b) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account. In the case of an adjustment under this paragraph to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

(3) The allocation of basis among partnership properties where paragraph (2) is applicable shall be made in accordance with the rules provided in subdivision 25.

Subd. 21. **Unrealized receivables and inventory items.** (1) The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to

(a) unrealized receivables of the partnership, or

(b) inventory items of the partnership which have appreciated substantially in value,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(2) (a) To the extent a partner receives in a distribution partnership property described in paragraph (1) (a) or (b) in exchange for all or a part of his interest in other partnership property (including money), or partnership property (including money) other than property described in paragraph (1) (a) or (b) in exchange for all or a part of his interest in partnership property described in paragraph (1) (a) or (b),

such transactions shall, under regulations prescribed by the commissioner, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(b) Subparagraph (a) shall not apply to a distribution of property which the distributee contributed to the partnership, or payments, described in subdivision 17(1), to a retiring partner or successor in interest of a deceased partner.

(3) For purposes of this chapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for

(a) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(b) services rendered, or to be rendered.

(4) (a) Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property, and ten percent of the fair market value of all partnership property, other than money.

(b) For purposes of this section the term "inventory items" means property of the partnership of the kind described in section 290.16, subdivision 3(1) (a), any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 290.16, subdivision 9(1) and (2), and any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in this sentence.

Subd. 22. **Treatment of certain liabilities.** (1) Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(2) Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(3) For purposes of this subdivision a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

(4) In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

Subd. 23. **Partner receiving income in respect of decedent.** The amount includible in the gross income of a successor in interest of a deceased partner under subdivision 17, clause (1), shall be considered income in respect of a decedent under section 290.077.

Subd. 24. **Manner of electing optional adjustment to basis of partnership property.** If a partnership files an election, in accordance with regulations prescribed by the commissioner, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in subdivision 15 and, in the case of a transfer of a partnership interest, in the manner provided in subdivision 20. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the commissioner.

Subd. 25. **Rules for allocation of basis.** (1) Any increase or decrease in the adjusted basis of partnership property under subdivision 15(2) (relating to the optional adjustment to the basis of undistributed partnership property) or subdivision 20(2) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in paragraph (2), be allocated

(a) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(b) in any other manner permitted by regulations prescribed by the commissioner.

(2) In applying the allocation rules provided in paragraph (1), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of

(a) capital assets and property described in section 290.16, subdivision 9(1), or

(b) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in subparagraph (a) or (b) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the commissioner.

Subd. 26. **Application, limitation of section; definitions.** (1) Under regulations the commissioner may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this section, if it is availed of

(a) for investment purposes only and not for the active conduct of a business, or

(b) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(2) For purposes of this section, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(3) For purposes of this section, the term "liquidation of a partner's interest" means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

Subd. 27. **Allocation of partnership income to state.** The taxable net income of the partnership shall be assigned to this state under sections 290.17 to 290.20.

Subd. 28. [Repealed, 1980 c 419 s 46]

History: *1933 c 405 s 30; Ex1937 c 49 s 20; 1939 c 446 s 13; 1945 c 596 s 2; 1945 c 604 s 30; 1947 c 635 s 11; 1955 c 406 s 1 (2394-30)*

290.311 PARTNERSHIP GROSS INCOME.

Subdivision 1. **Resident partners.** (a) Partner's modifications. In determining gross income and Minnesota taxable income of a resident partner, any modification described in section 290.01, subdivision 20, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates.

(b) Character of items. Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this section which it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Minnesota tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the effect of such provision is the avoidance or evasion of tax under this section, the partner's distributive share of such item, and any modifications required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Subd. 2. **Nonresident partners.** (a) Portion derived from Minnesota sources. In determining Minnesota adjusted gross income and Minnesota taxable income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with Minnesota sources of such partner's distributive share of items of partnership income, gain, loss or deduction for federal income tax purposes. The portion of such distributive share of each item which is derived from or connected with Minnesota sources, shall be determined under regulations of the commissioner.

(b) Partner's modifications. Any modification described in section 290.01, subdivision 20, which relates to an item of partnership income, gain, loss or deduction, shall be made to the extent of the portion derived from or connected with Minnesota sources of the item to which the modification relates.

(c) Alternate methods. The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of

the distributive share of partnership items derived from or connected with Minnesota sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as it may require.

History: *Ex1961 c 51 s 2; 1965 c 51 s 61; 1980 c 419 s 18,19*

290.32 TAXES FOR PART OF YEAR, COMPUTATION.

When under this chapter a taxpayer is permitted or required to make a return for a fractional part of a year, the tax shall be computed in the same manner as if such fractional part of a year were an entire year, except:

(1) When a taxpayer is permitted to change the basis for reporting his income from a fiscal to a calendar year, he shall make a separate return for the period between the close of his last fiscal year and the following December thirty-first; if the change is from a calendar to a fiscal year, a separate return shall be made for the period between the close of his last calendar year and the date designated as the close of the fiscal year; and if the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. The taxable net income for any such period shall be put on an annual basis by multiplying the amount thereof by 12 and dividing by the number of months included in the period for which such separate return is made; and the tax shall be that part of a tax, computed on the taxable net income put on such annual basis, less the credit against that taxable net income under the provisions of section 290.21, which the number of months in such period bears to 12 months.

(2) Where any of the enumerated changes in accounting period referred to in clause (1) involve a 52-53 week fiscal year and any such change results in a short period of less than seven days, such short period shall be added to and deemed a part of the following taxable year. If the change results in a short period of seven or more days, but less than 359 days, the taxable net income for any such period shall be placed on an annual basis by multiplying such income by 365 and dividing the result by the same number of days in the short period; and the tax shall be that part of a tax, computed on the taxable net income placed on such annual basis, less the credit against that taxable net income under the provisions of section 290.21, which the number of days in such short period bears to 365 days. Where the short period is 359 days or more, the tax shall be computed in the same manner as if such short period were an entire year.

History: *1933 c 405 s 31; 1955 c 124 s 1; 1980 c 419 s 20 (2394-31)*

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

The tax imposed on a taxpayer for a period beginning in one calendar year, hereinafter called "first calendar year," and ending in the following calendar year, hereinafter called "second calendar year," when the law applicable to the first calendar year is different from the law applicable to the second calendar year, shall be the sum of (1) that proportion of a tax for the entire period, computed under the law applicable to the first calendar year, which the portion of such period falling within the first calendar year is of the entire period, and (2) that proportion of a tax for the entire period, computed under the law applicable to the second calendar year, which the portion of such period falling within the second calendar year is of the entire period.

History: *1933 c 405 s 32-1; Ex1937 c 49 s 21 (2394-32a)*

290.34 CORPORATIONS, SPECIAL PROVISIONS.

Subdivision 1. **Business conducted in such a way as to create losses or improper taxable net income.** When any corporation liable to taxation under this chapter conducts its business in such a manner as, directly or indirectly, to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodities or services in which it deals at less than the fair price which might be obtained therefor, or buying such commodities or services at more than the fair price for which they might have been obtained, or when any corporation, a substantial portion of whose shares is owned directly or indirectly by another corporation, deals in the commodities or services of the latter corporation in such a manner as to create a loss or improper net income or to reduce the taxable net income attributable to this state, the commissioner of revenue may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income or the overstatement of its losses, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business.

Subd. 2. **Affiliated or related corporations, consolidated statements.** When a corporation which is required to file an income tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or has its income regulated through contract or other arrangement, the commissioner of revenue may permit or require such consolidated statements as, in his opinion, are necessary in order to determine the taxable net income received by any one of the affiliated or related corporations.

Subd. 3. **Affiliated or related corporations, consolidated returns.** An affiliated group of corporations, all the members of which are required to file income tax returns under the provisions of this chapter, shall have the privilege of filing a consolidated return in lieu of separate returns, if the entire income of each of the members of the affiliated group including the common parent, if any, is assignable to this state under the provisions of this chapter. In the case of a corporation which is a member of the affiliated group for a fractional part of the taxable year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group. Only one credit provided by section 290.21, subdivision 2, shall be allowed in computing the tax on such consolidated return. The consolidated net income of the affiliated group shall be determined in accordance with such regulations as the commissioner may prescribe. As used in this subdivision, an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if (1) at least 90 percent of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and (2) the common parent corporation owns directly 90 percent of the stock of at least one of the other corporations; and (3) each of the corporations is either (a) a corporation whose principal business is that of a common carrier by railroad or (b) a corporation, the assets of which consist principally of stock in such corporation, and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this subdivision, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley

system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this section, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

Subd. 4. [Repealed, 1980 c 419 s 46]

History: *1933 c 405 s 32; 1941 c 458; 1941 c 550 s 13; 1973 c 582 s 3 (2394-32)*

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

The taxable net income of insurance companies taxable under this chapter shall be computed as follows:

Each such company shall report to the commissioner the net income returned by it for the taxable year to the United States under the provisions of the act of congress, known as the revenue act of 1936, or that it would be required to return as net income thereunder if it were in effect. The commissioner shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business; provided, the commissioner shall add to the taxable net income so apportioned to this state the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge or premiums imposed by sections 69.54 to 69.57) which shall have been deducted from gross income by the company in arriving at its total net income under the provisions of such act of congress.

History: *1933 c 405 s 32-2; Ex1937 c 49 s 21 (2394-32b)*

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

The taxable net income of investment companies shall be computed and be exclusively as follows:

Each investment company transacting business as such in this state shall report to the commissioner the net income returned by the company for the taxable year to the United States under the provisions of the Internal Revenue Code of 1954, as amended through December 31, 1979, less the credits provided therein, or the net income that such company would be required to return under such act less such credits, if such act were in effect. The commissioner shall compute therefrom the taxable net income of the investment company by assigning to this state that proportion of such net income, less such credits which the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of this state, bears to the total amount of the gross payments collected during such year by the company from such business upon investment contracts issued by the company and held by persons residing within the state and elsewhere.

As used in this section, the term "investment company" means any person, co-partnership, association, or corporation, whether local or foreign, coming within the purview of section 54.26, and who or which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 and following), and who or which solicits or receives payments to be made to himself or itself and which issues therefor, or has issued therefor and has or shall have outstanding so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement to return to the holders or owners

thereof money or anything of value at some future date; and as to whom the gross payments received during the taxable year in question upon outstanding investment contracts, plus interest and dividends earned on investment contracts determined by prorating the total dividends and interest for the taxable year in question in the same proportion that certificate reserves as defined by the Investment Company Act of 1940 is to total assets, shall be at least 50 percent of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year in question. The term "investment contract" shall mean any such so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement issued by an investment company.

History: *1933 c 405 s 32-3; Ex1937 c 49 s 21; 1947 c 635 s 19; 1977 c 386 s 6; 1980 c 607 art 1 s 32 (2394-32c)*

290.361 NATIONAL AND STATE BANKS; IMPOSITION OF EXCISE TAX, COMPUTATION, SURTAX.

Subdivision 1. **Imposition of excise tax.** An excise tax measured by net income is hereby imposed on national and state banks by this chapter and shall be governed by the provisions of section 290.02.

Subd. 2. **Computation of taxable net income.** The taxable net income shall be computed in the manner provided by this chapter except that in the case of national and state banks: (a) the rate shall be 12 percent; (b) the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940, instead of January 1, 1933; (c) property consisting of investments in bonds, stocks, notes, debentures, mortgages, certificates, or any evidence of indebtedness, and any property acquired in liquidation thereof when such property is held for investment or for sale, shall not be deemed to be capital assets; and (d) in computing net income there shall be allowable as a deduction from gross income, in addition to deductions otherwise provided for in this chapter, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from federal income taxes, on the preferred stock of the bank owned by the United States or such instrumentality.

Subd. 3. [Repealed, 1971 c 34 s 1]

Subd. 4. [Repealed, 1980 c 419 s 46]

Subd. 5. **In lieu of certain taxes.** The tax hereby imposed upon national and state banks shall be in lieu of all taxes upon the capital, surplus, property, assets, and shares of these banks, except taxes imposed upon real property.

Subd. 6. [Repealed, Ex1971 c 31 art 6 s 5]

Subd. 7. [Repealed, Ex1971 c 31 art 6 s 5]

History: *1941 c 18 s 1; 1945 c 604 s 22; 1947 c 635 s 12; 1949 c 642 s 12; 1951 c 605 s 4; Ex1957 c 1 art 7 s 3; 1959 c 157 s 10; Ex1959 c 70 art 3 s 9,10; Ex1961 c 91 art 1 s 3; Ex1961 c 91 art 5 s 2; 1963 c 886 s 5,6; 1965 c 884 art 1 s 5,6; Ex1967 c 32 art 12 s 2, art 14 s 6,7; 1969 c 399 s 49; 1969 c 881 s 7,8; 1971 c 759 s 1; Ex1971 c 2 s 5-7; Ex1971 c 31 art 6 s 3,4; 1973 c 650 art 8 s 1; 1973 c 650 art 25 s 1; 1980 c 419 s 21*

290.362 [Renumbered 290.085]

290.363 [Repealed, 1980 c 419 s 46]

290.37 FILING REQUIREMENTS FOR INDIVIDUALS.

Subdivision 1. **Persons making returns.** The commissioner of revenue shall annually determine the gross income levels at which individuals and estates shall be required to file a return for each taxable year.

The trustee or other fiduciary of property held in trust shall file a return with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed, or if the gross income of such trust exceeds $750, if in either case such trust belongs to the class of taxable persons.

Every corporation shall file a return with respect to its taxable net income if in excess of $500, or if its gross income exceeds $5,000. The return in this case shall be signed by an officer of the corporation.

The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer shall file a return with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed (or, if the taxpayer is a corporation, if the taxable net income exceeds $500), or if such taxpayer's gross income exceeds $5,000.

Such return shall (a) be verified or contain a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, and (b) shall contain a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

For purposes of this subdivision the term "gross income" shall mean gross income as defined in section 61 of the Internal Revenue Code of 1954, as amended through December 31, 1979, modified and adjusted in accordance with the provisions of sections 290.01, subdivision 20, clauses (b) (6) and (b) (11), 290.08, and 290.17.

Subd. 2. **Verification.** If a return is prepared for a taxpayer by a person (or persons) or a firm (including partnerships, corporations, etc.), the individual or firm responsible for such preparation shall complete the statement of verification provided on the income return forms in the following manner:

(a) If the person (or persons), responsible for the preparation of the return is an individual acting in his own capacity, the statement of verification shall be signed by such individual;

(b) If a firm is responsible for the preparation of the return, the statement of verification shall be signed with the firm name. However, if the firm name is stamped or typed, it should be followed by the signature of a person authorized to sign the verification on behalf of the firm. The firm may authorize any officer, member, or employee to sign the verification.

Such verification is not required if the actual preparation of the return is a regular and usual incident of the employment of one regularly and continuously employed for full time by the person for whom the return is made (such as a clerk, secretary, bookkeeper, etc.).

Subd. 3. **Information included in return.** The return provided for herein shall require a statement of the name of the taxpayer, or taxpayers, if the return be a joint return, and the address of such taxpayer in the same name or names and same address as the taxpayer has used in making his income tax return to the United States under the terms of the internal revenue act of 1954, and shall include the social security number of the taxpayer, or taxpayers, if a social security number has been issued by the United States with respect to said taxpayers, and shall include the amount of the adjusted gross income of such taxpayer as the same appears on said return to the United States internal revenue service for the taxable year to which such Minnesota state return is applicable; or, in lieu thereof, the taxpayer shall attach to his Minnesota state income tax return a copy of the federal income tax return which he has filed or is about to file for such period. The commissioner of revenue, if necessary to audit the return of the taxpayer for a particular period, may require a detailed schedule of the items used to compute the adjusted gross income of such taxpayer as the same

appears on said return to the United States internal revenue service for the taxable year to which such Minnesota return is applicable; or, in lieu thereof, a copy of the federal income tax return filed for such period.

History: *1933 c 405 s 33; Ex1937 c 49 s 32; 1943 c 656 s 14; 1945 c 604 s 11; 1947 c 635 s 18; 1951 c 609 s 2; 1953 c 664 s 1; 1957 c 934 s 1; 1959 c 367 s 1; Ex1959 c 70 art 3 s 11,12; 1963 c 355 s 11; 1965 c 403 s 1; 1969 c 308 s 1; 1971 c 44 s 1; 1971 c 101 s 1; 1971 c 769 s 2; 1973 c 55 s 1; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1977 c 423 art 1 s 13; 1978 c 721 art 2 s 2; 1978 c 766 s 6; 1979 c 303 art 1 s 22; 1980 c 607 art 1 s 23,32 (2394-33)*

290.38 JOINT RETURNS OF HUSBAND AND WIFE.

A husband and wife may make a single return jointly even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. If both husband and wife have gross income they may elect to either file a single return jointly or may file separate returns pursuant to this section or as provided in section 290.39, subdivision 2. This election to file a joint or separate returns may be changed within the period provided for the assessment of additional taxes on said return or returns. In the event taxpayers desire to change their election, such change shall be done in the manner and on such form as the commissioner shall prescribe by regulation.

No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year or if the taxable year of either spouse is a fractional part of a year under section 290.32.

In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by the personal representative of his estate; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if (a) no return for the taxable year has been made by the decedent, (b) no personal representative has been appointed, and (c) no personal representative is appointed before the last day prescribed by law for filing the return of the surviving spouse. If a personal representative of the estate of the decedent is appointed after the joint return has been filed by the surviving spouse, the personal representative may disaffirm such joint return by filing, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

If husband and wife determine their federal income tax on a joint return but determine their Minnesota income taxes separately, they shall determine their Minnesota gross income separately as if their federal adjusted gross incomes had been determined separately.

History: *1933 c 405 s 34; 1953 c 664 s 2; Ex1959 c 70 art 3 s 13; 1961 c 213 art 4 s 5; 1971 c 54 s 1; 1971 c 445 s 1; 1975 c 349 s 30; 1980 c 419 s 22 (2394-34)*

290.39 RETURN; FORM AND FILING.

Subdivision 1. **In general.** Every return shall specifically set forth the items of gross income, deductions, credits against net income, credits against the tax, and any other data necessary for computing the amount of any item required for

determining the amount of the net income tax liability. The return shall be in such form as the commissioner of revenue may prescribe. The filing of a return required under this section shall be deemed an assessment subject to revision of the tax shown due on the basis of such return.

Subd. 1a. **Tax tables.** Notwithstanding any other provision of this chapter to the contrary, the commissioner may, in his discretion, prepare tables for computing the tax for individuals, estates, and trusts which may reflect the allowance of personal and dependent credits or which may reflect the allowance of the standard deduction and the personal and dependent credits.

Subd. 2. **Single form for separate returns.** Notwithstanding the provisions of section 290.61, a husband and wife may elect to file separate Minnesota income tax returns on a single form in which event:

(a) if the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of tax for which such spouse is separately liable, the excess may be applied by the commissioner to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

(b) if the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses or may be credited against any liability in respect of Minnesota income tax on the part of either spouse;

(c) if the standard deduction provided for by section 290.09, subdivision 15, is not utilized, then the total of the Minnesota itemized deductions of a husband and wife may be taken by either or divided between them as they elect.

History: *1933 c 405 s 35,36; 1959 c 367 s 2; 1967 c 582 s 1; 1971 c 445 s 2; 1973 c 582 s 3; 1978 c 766 s 2,7 (2394-35, 2394-36)*

290.391 AMENDED RETURNS.

Any taxpayer who finds that his income tax return as originally filed is in error may correct such error by filing an amended return. An amended return should be filed on a return form for the same year as the return that is being corrected and the words "Amended Return" should be placed at the top of page one of the return. The filing date of the original return starts the running of the statute of limitations, and any subsequent filing of an amended return does not toll the statute.

If the taxpayer is entitled to a credit or refund due to the correction, the amended return will serve as a claim or a claim for refund form may be filed. In either case the claim must be filed before the limitation period expires.

History: *1965 c 191 s 1*

290.40 ANNUAL RETURN, EXCEPTIONS.

The return shall cover a 12-month period, except in the following cases:

(1) The return made by or for any taxpayer who was in existence for less than the whole of a taxable year shall cover that part of the taxable year during which such taxpayer was in existence;

(2) A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week, and ends always (a) on whatever date such same day of the week last occurs in a calendar month or (b) on whatever date such same day of the week falls which is nearest to the last day of a calendar month, may, in accordance with regulations prescribed by the commissioner,

elect to compute his net income and taxable net income on the basis of such annual period. In any case in which the effective date or the applicability of any provision of this chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described herein shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or as ending with the last day of the calendar month ending nearest to the last day such taxable year, as the case may be;

(3) A taxpayer who changes from one taxable year to another shall make a return from the fractional parts of a year, as specified in section 290.32.

History: *1933 c 405 s 37; 1955 c 123 s 1; 1980 c 419 s 23 (2394-37)*

290.41 INFORMATION RETURNS.

Subdivision 1. **By partnerships.** Partnerships shall make a return for each taxable year which shall conform in every respect to the requirements of section 290.39, and shall, in addition, include the names and addresses of all partners entitled to a distributive share in their taxable net income and the amount of such distributive share to which each is entitled. The return shall contain or be verified by a written declaration that it is made under the penalties of criminal liability for wilfully making a false return.

Subd. 2. **By persons or corporations.** Every person or corporation making payments in the regular course of a trade or business during the taxable year to any person or corporation in excess of $600 on account of rents, or of $10 or more on account of interest, or in excess of $10 on account of dividends, or in excess of $600 on account of either wages, salaries, or commissions, or on account of earnings in excess of $10 distributed to its members by savings, building and loan associations chartered under the laws of this state or the United States, shall make a return in respect to such payments in excess of the amounts specified, giving the names and addresses of the persons to whom such payments were made, the amounts paid to each. The state treasurer or other corresponding officer, by whatever name known, of every political subdivision of the state, of every city and of every school district, shall, on or before the first day of March each year, beginning with March, 1938, make and file with the commissioner of revenue a report giving the name of each employee or official to whom the state or such political subdivision, city, or school district, during the preceding calendar year, paid any salary or wages in excess of $600, together with the last known address of such employee or official.

Subd. 3. **By brokers.** The commissioner of revenue may require brokers to furnish him with the names of customers for whom they have transacted business, and with such details as to transactions of any customer as will enable him to determine whether all income due on profits or gains of such customers has been paid.

Subd. 4. **By agents.** The commissioner may require any person acting as agent for another to make a return giving such information as may be reasonably necessary to properly assess and collect the tax imposed by this chapter upon the person for whom he acts.

History: *1933 c 405 s 38; Ex1937 c 49 s 22; 1941 c 550 s 14; 1951 c 609 s 3,4; 1951 c 648 s 4; 1959 c 593 s 1; 1965 c 244 s 1; 1973 c 123 art 5 s 7; 1973 c 582 s 3 (2394-38)*

290.42 FILING RETURNS, DATE.

The returns required to be made under sections 290.37 to 290.39 and 290.41, other than those under section 290.41, subdivisions 3 and 4, which shall be made within 30 days after demand therefor by the commissioner, shall be filed at the following times:

(1) Returns made on the basis of the calendar year shall be filed on the fifteenth day of April, following the close of the calendar year, except that returns of corporations shall be filed on the fifteenth day of March following the close of the calendar year;

(2) Returns made on the basis of the fiscal year shall be filed on the fifteenth day of the fourth month following the close of such fiscal year, except that returns of corporations shall be filed on the fifteenth day of the third month following the close of the fiscal year;

(3) Returns made for a fractional part of a year as an incident to a change from one taxable year to another shall be filed on the fifteenth day of the fourth month following the close of the period for which made, except that such returns of corporations shall be filed on the fifteenth day of the third month following the close of the period for which made;

(4) Other returns for a fractional part of a year shall be filed on the fifteenth day of the fourth month following the end of the month in which falls the last day of the period for which the return is made, except that such returns of corporations shall be filed on the fifteenth day of the third month following the end of the month in which falls the last day of the period for which the return is made:

In the case of a final return of a decedent for a fractional part of a year, such return shall be filed on the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of a year.

(4a) In the case of the return of a cooperative association such returns shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

(5) If the due date for any return required under chapter 290 falls upon:

(A) A Saturday, such return filed by the following Monday shall be considered to be timely filed;

(B) A legal holiday, such return filed on the next succeeding business day shall be considered to be timely filed, except, that for the purpose of this paragraph, Saturday shall not be considered to be a business day.

(6) In case of sickness, absence, or other disability, or when, in his judgment, good cause exists, the commissioner may extend the time for filing these returns for not more than six months, except that where the failure is due to absence outside the United States he may extend the period until 30 days after the taxpayer's return to this state. He may require each taxpayer in any of such cases to file a tentative return at the time fixed for filing the regularly required return from him, and to pay a tax on the basis of such tentative return at the times required for the payment of taxes on the basis of the regularly required return from such taxpayer. The commissioner may exercise his power under this clause by general regulation only.

History: *1933 c 405 s 39; Ex1937 c 49 s 23; 1949 c 734 s 12; 1951 c 607 s 1; 1953 c 622 s 1; 1955 c 2 s 1; 1959 c 72 s 1; 1961 c 100 s 1; 1967 c 113 s 1 (2394-36)*

290.43 RETURNS, WHERE FILED.

The returns required to be made under sections 290.37 to 290.39 and 290.41 shall be filed with the commissioner at his office in St. Paul.

History: *1933 c 405 s 40; 1955 c 168 s 1 (2394-40)*

290.431 NON-GAME WILDLIFE CHECKOFF.

Effective with returns filed for taxable years beginning after December 31, 1979, every person who files an income tax return or property tax refund claim form may designate that $1 or more shall be deducted from the refund that would otherwise be payable to that person and paid into a fund to be established for the management of non-game wildlife. The commissioner of revenue shall, on the first page of the income tax return and the property tax refund claim form, notify filers of their right to designate that a portion of their refund shall be paid into the non-game wildlife management fund. The sum of the amounts so designated to be paid shall be annually appropriated from the general fund to the commissioner of natural resources and credited to the non-game wildlife management fund for use by the non-game section of the division of wildlife in the department of natural resources.

History: *1980 c 607 art 1 s 24*

290.44 PAYMENT OF TAX, WHO MUST PAY.

The taxes imposed by this chapter, and interest and penalties imposed with respect thereto, shall be paid by the taxpayer upon whom imposed, except in the following cases:

(1) The tax due from a decedent for that part of the taxable year in which he died during which he was alive shall be paid by his personal representative;

(2) The tax due from an infant or other incompetent person shall be paid by his guardian or other person authorized or permitted by law to act for him;

(3) The tax due from the estate of a decedent shall be paid by the personal representative thereof;

(4) The tax due from a trust, including those within the definition of corporation, shall be paid by the trustee or trustees;

(5) The tax due from a taxpayer whose business or property is in charge of a receiver, trustee in bankruptcy, assignee, or other conservator, shall be paid by the person in charge of such business or property so far as the tax is due to the income from such business or property.

History: *1933 c 405 s 41; 1975 c 349 s 30 (2394-41)*

290.45 PAYMENT OF TAX, TIME FOR.

Subdivision 1. **Date due, installments.** The tax imposed by this chapter shall be paid to the commissioner of revenue at St. Paul, Minnesota at the time fixed for filing the return on which the tax is based, except that at the election of the following taxpayers the balance of tax due after applying any tax credit and payment of estimated tax may be paid in two equal installments, as follows:

(a) as to estates and trusts, the first shall be paid at the time fixed for filing the return, and the second on or before six months thereafter.

(b) as to corporations, the first shall be paid at the time fixed for filing the return and the second on or before three months thereafter. If any installment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.

Subd. 2. **Extensions.** (A) At the request of the taxpayer, and for good cause shown, the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid

together with interest at the rate specified in section 270.75 on or before the date of the expiration of the period of the extension.

(B) When any portion of the tax as reported by the taxpayer together with interest and penalty thereon, if any, has not been paid six months from the date prescribed by law for the payment thereof the commissioner may extend the time for payment thereof for a further period not to exceed 30 months. When the authority of this paragraph (B) is invoked, the extension shall be evidenced by written agreement signed by the taxpayer and the commissioner, stating the amount of such tax with penalty and interest, if any, and providing for the payment of such amount in regular weekly, semi-monthly or monthly installments, which agreement shall contain a confession of judgment for such amount and for any unpaid portion thereof and providing that the commissioner may forthwith enter judgment against the taxpayer in the district court of the county of his residence as shown upon his tax return for the unpaid portion of the amount specified in said extension agreement. The principal sum specified in said agreement shall bear interest at the rate specified in section 270.75 on all unpaid portions thereof until the same has been fully paid or the unpaid portion thereof has been entered as a judgment, which judgment shall bear interest at the rate specified in section 270.75. If it shall appear to the satisfaction of the commissioner that the tax reported by the taxpayer is in excess of the amount actually owing by the taxpayer, the extension agreement or the judgment entered pursuant thereto shall be so corrected. If after making such extension agreement or entering judgment with respect thereto, the commissioner shall determine that the tax as reported by the taxpayer is less than the amount actually due, the commissioner shall assess such further tax in accordance with the provisions of this chapter. The authority granted to the commissioner by this paragraph (B) is in addition to any other authority granted to the commissioner by law to extend the time of payment or the time for filing a return and shall not be construed in limitation thereof.

Subd. 2a. [Repealed, 1980 c 419 s 46]

Subd. 3. **Payment before date due.** A tax imposed by Laws 1949, Chapter 734, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

Subd. 4. **Tax due of $1 or less.** Notwithstanding any other provision of law, any taxpayer whose unpaid liability for income taxes, as reflected upon the return prepared by said taxpayer, is $1 or less, need not pay such amount.

History: *1933 c 405 s 42; 1941 c 335 s 1; 1941 c 550 s 15; 1949 c 734 s 15; 1951 c 607 s 2; Ex1957 c 1 art 6 s 1; 1961 c 213 art 2 s 1; 2Ex1961 c 1 s 2,3; 1967 c 116 s 1; 1969 c 160 s 1; 1969 c 325 s 3; 1971 c 38 s 1; 1973 c 582 s 3; 1975 c 377 s 11 (2394-42)*

290.46 EXAMINATION OF RETURNS; ASSESSMENTS, REFUNDS.

The commissioner shall, as soon as practicable after the return is filed, examine the same and make any investigation or examination of the taxpayer's records and accounts that he may deem necessary for determining the correctness of the return. The tax computed by him on the basis of such examination and investigation shall be the tax to be paid by such taxpayer. If the tax found due shall be greater than the amount reported as due on the taxpayer's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the commissioner within 60 days after notice of the amount and demand for its payment shall have been mailed to the taxpayer by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the taxpayer on his return which have not yet been paid shall be paid

to the commissioner within 60 days after notice of the amount thereof and demand for payment shall have been mailed to the taxpayer by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the taxpayer's return, the excess shall be refunded to the taxpayer in the manner provided by section 290.50 (except that no demand therefor shall be necessary), if he has already paid the whole of such tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in section 290.50, after the expiration of three and one-half years after the filing of the return.

If the commissioner examines returns of a taxpayer for more than one year, he may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by sections 290.46 to 290.48 shall be in such form as the commissioner may determine (including a statement) and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the taxpayer at the address given in his return, or to his last known address.

In cases where there has been an overpayment of a self-assessed liability as shown on the return filed by the taxpayer, the commissioner may refund such overpayment to the taxpayer and no demand therefor shall be necessary; further, written findings by the commissioner, notice by mail to the taxpayer and certificate for refundment by the commissioner shall not be necessary and the provisions of section 270.10, in such case, shall not be applicable.

History: *1933 c 405 s 43; 1939 c 446 s 21; 1947 c 635 s 13; 1957 c 764 s 1; Ex1959 c 58 s 1; 1965 c 255 s 1; 1969 c 307 s 1; 1978 c 767 s 19 (2394-43)*

290.47 ASSESSMENT; FAILURE TO FILE RETURN, FALSE OR FRAUDULENT RETURN FILED.

If any person or corporation required by this chapter to file any return shall fail to do so within the time prescribed by this chapter or by regulations under the authority thereof, or shall make, wilfully 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. If such taxpayer shall fail within that time to file such return, or corrected return, the commissioner shall make for him a return, or corrected return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 60 days after the commissioner has mailed to such taxpayer 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 the taxpayer 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.

History: *1933 c 405 s 44; Ex1937 c 49 s 30; 1941 c 550 s 16; 1978 c 767 s 20 (2394-44)*

290.48 DELINQUENT TAXES, COLLECTION.

Subdivision 1. **Legal action.** If a tax imposed by this chapter, including penalties therein, or any portion of such tax, is not paid within 60 days after it is required to be paid thereunder, the commissioner shall, unless he proceeds under one of the other subdivisions of this section, bring against the person

liable for payment thereof an action at law, in the name of the state, for the recovery of the tax and interest and penalties due in respect thereof under this chapter. Such action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the taxpayer, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by the taxpayer shall be conclusive against the taxpayer in this matter. If no such place is named in the return such action may be commenced in Ramsey county. Such action shall be commenced by filing with the clerk of such court a statement showing the name and address of the taxpayer, if known, an itemized summary of the taxable net income on the basis of which the tax has been computed, the tax due and unpaid thereon and the interest and penalties due with respect thereto under the provisions of this chapter, and shall contain a prayer that the court adjudge the taxpayer to be indebted on account of such taxes, interest, and penalties in the amount thereof specified in the statement; a copy of such statement shall be furnished to the clerk therewith. The clerk shall mail a copy of the statement by certified mail to the taxpayer at the address given in the return, if any; and, if no such address is given, then at his last known address, within five days after the same is filed, except that, if the taxpayer's address is not known, notice to him shall be made by posting copy of the statement for ten days in the place in the courthouse where public notices are regularly posted. The taxpayer shall, if he desires to litigate the claim, or any part thereof, file a verified answer with the clerk setting forth his objections to the claim, or any part thereof; the answer shall be filed on or before the lapse of the twentieth day after the date of mailing the statement; or, if notice has been given by posting, on or before the twentieth day after the expiration of the period during which the notice was required to be posted. If no answer is filed within the specified time, the clerk, upon the filing of an affidavit of default, shall enter judgment for the state in the amount prayed for, plus costs of $10. If an answer be filed, the issues raised shall stand for trial as soon as possible after the filing of the answer, and the court shall determine the issues and direct judgment accordingly; and, if the taxes, interest, or penalties are sustained to any extent over the amount rendered by the taxpayer, shall assess $10 costs against the taxpayer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The commissioner may call upon the county attorney or the attorney general to conduct such proceedings on behalf of the state. Execution shall be issued upon the judgment at the request of the commissioner, and such execution shall, in all other respects, be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon such execution.

Subd. 2. **Levy and sale.** If a tax imposed by this chapter, or any portion of such tax, is not paid within 60 days after it is required to be paid thereunder, the commissioner shall issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer and to levy upon the rights to property of the taxpayer within the county, and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer and to levy upon the rights to property of the taxpayer within his county, except the homestead and household goods of the taxpayer and property of the taxpayer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and shall sell so much thereof as is required to satisfy such taxes, interest, and penalties, together with his costs; but such sales shall,

as to their manner, be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain such part thereof as is required to satisfy the tax, interest, penalties, and costs, and pay over any balance to the taxpayer. The commissioner shall not proceed under this subdivision until the expiration of 60 days after mailing to the taxpayer, at his last known address, a written notice of the amount of taxes, interest, and penalties due from the taxpayer and demand for their payment. Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy provided for in this act.

Subd. 3. **Collection jeopardized by delay.** The commissioner may also proceed under the provisions of subdivision 2 when he has reasonable grounds for believing that the collection of any taxes, interest, or penalties due under this chapter will be jeopardized by delays incident to other methods of collection; and, in such cases, no preliminary notice and demand shall be required.

Subd. 4. **Taxpayer about to remove from state.** If the commissioner has reasonable grounds for believing that a taxpayer is about to remove himself or his property from this state with the purpose of evading the tax imposed by this chapter, he may immediately declare the taxpayer's taxable year at an end and assess a tax on the basis of his own knowledge or information available to him, mail the taxpayer written notice of the amount thereof, at his last known address, demand its immediate payment; and, if payment is not immediately made, collect the tax by the method prescribed in subdivision 2, except that it need not await the expiration of the periods of time therein specified.

Subd. 5. **Ordinary action at law or in equity.** In addition to all other methods authorized for the collection of the tax, it may be collected in an ordinary action at law or in equity by the state against the taxpayer. In any action commenced pursuant to this subdivision, upon the filing of an affidavit of default, the clerk of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 6. **Appeals.** Either party to an action or a judgment for the recovery of any taxes, interest, or penalties under subdivision 1 or subdivision 5 may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

Subd. 7. **Injunction forbidden.** No suit shall lie to enjoin the assessment or collection of any taxes imposed by this chapter, or the interest and penalties imposed thereby.

Subd. 8. **Tax presumed valid.** The tax, as assessed by the commissioner, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its incorrectness or invalidity. The statement filed by the commissioner with the clerk of court, as provided herein, or any other certificate by the commissioner of the amount of the tax and penalties as determined or assessed by him, shall be admissible in evidence and shall establish prima facie the facts set forth therein.

Subd. 9. **Confession of judgment.** (a) The commissioner may, within three and one-half years after the return is filed, notwithstanding section 541.09, enter judgment on any confession of judgment after ten days notice served upon the taxpayer by mail at the address shown in his return. Such judgment shall be entered by the clerk of court of any county upon the filing of a photocopy or similar reproduction of that part of the return containing the confession of judgment along with a statement of the commissioner or his agent that the tax has not been paid.

(b) Notwithstanding any other provision of the law to the contrary, the commissioner may, within five years after a written agreement is signed by the taxpayer and the commissioner under the provisions of section 290.45, subdivision 2, enter judgment on the confession of judgment contained within said agreement after ten days notice served upon the taxpayer at the address shown in said agreement. Such judgment shall be entered by the clerk of court of any county upon the filing of said agreement or a certified copy thereof along with a statement of the commissioner or his agent that the tax has not been paid.

History: *1933 c 405 s 45; 1957 c 763 s 1,2; 1959 c 367 s 3-5; 1959 c 596 s 1; 1965 c 464 s 1; 1969 c 305 s 1; 1978 c 674 s 60; 1978 c 767 s 21,22 (2394-45)*

290.49 TIME LIMIT ON ASSESSMENT, COLLECTION.

Subdivision 1. **Assessment, generally.** Except as otherwise provided in this chapter the amount of taxes assessable shall be assessed within three and one-half years after the return is filed. Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by mail to the post office address given in the return, and the record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Subd. 2. **Assessment, court proceedings; income in respect of decedent, income to trustee, fiduciary, corporation.** In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by a corporation, the tax shall be assessed within 18 months, and any proceeding in court for the collection of such tax shall be begun within two years after written request for such assessment (filed after the return is made and in such form as the commissioner may prescribe) by the personal representative or other fiduciary representing the estate of such decedent, or by the trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by the corporation, but except as provided in subdivision 8, no assessment shall be made after the expiration of three and one-half years after the return was filed, and no action shall be brought after the expiration of four years after the return was filed.

This subdivision shall not apply in the case of a corporation unless

(1) such written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of such 18-months period; and

(2) the dissolution is in good faith begun before the expiration of such 18-months period; and

(3) the dissolution is completed.

Subd. 3. **Omission in excess of 25 percent.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within six and one-half years after the return was filed.

For purposes of this subdivision, the term "gross income" shall mean gross income as defined in section 290.37, subdivision 1.

Subd. 4. **Omission of corporate liquidation proceeds.** If the taxpayer omits from gross income an amount properly includible therein under section 290.01,

subdivision 21, as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within six and one-half years after the return was filed.

Subd. 5. **Computation of time.** For the purposes of this section and of section 290.50, a return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day.

Subd. 6. **No return or false or fraudulent return.** When a taxpayer files a false or fraudulent return with intent to evade tax or when a taxpayer fails to file a return the tax may be assessed, and a proceeding in court for the collection of such tax may be begun at any time.

Subd. 7. **Court proceedings.** Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun

(1) within eighteen months after the expiration of the period for the assessment of the tax, or

(2) within eighteen months after the expiration of the period agreed upon by the commissioner and the taxpayer, pursuant to the provisions of subdivision 8, or

(3) within eighteen months after final disposition of any appeal from the order of assessment.

Subd. 8. **Consent to extend time.** Where before the expiration of the time prescribed in subdivisions (1) and (2) for the assessment of the tax, the commissioner and the taxpayer consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period 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.

Subd. 9. [Repealed, 1980 c 419 s 46]

Subd. 10. **Incorrect determination of federal adjusted gross income.** Notwithstanding any other provision of this chapter, if a taxpayer whose gross income is determined under section 290.01, subdivision 20, omits from income such an amount as will under the Internal Revenue Code of 1954, as amended through December 31, 1979 extend the statute of limitations for the assessment of federal income taxes; or otherwise incorrectly determines his federal adjusted gross income resulting in adjustments by the Internal Revenue Service then the period of assessment and determination of tax shall be the same as that under the Internal Revenue Code of 1954, as amended through December 31, 1979. When a change is made to federal income during the extended time provided under this subdivision, the provisions under section 290.56 regarding additional extensions apply.

History: *1933 c 405 s 46; Ex1936 c 87 s 1; Ex1937 c 49 s 24; 1939 c 59 s 2; 1939 c 446 s 14; 1941 c 550 s 1; 1943 c 656 s 15; 1945 c 604 s 12; 1947 c 635 s 14; 1949 c 734 s 13; 1951 c 269 s 1; 1951 c 649 s 1-4; 1955 c 125 s 1; 1955 c 128 s 1; 1961 c 213 art 4 s 6; 1961 c 505 s 1,2; 1961 c 509 s 1; 1961 c 511 s 1; 1969 c 718 s 1; 1971 c 769 s 2; 1973 c 21 s 1; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1978 c 674 s 33; 1980 c 419 s 24; 1980 c 607 art 1 s 25,32 (2394-46)*

290.50 OVERPAYMENTS, CLAIMS FOR REFUND OR CREDITS.

Subdivision 1. **Procedure, time limit.** (a) A taxpayer who has paid or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. Except as otherwise provided in this section, no claim or refund shall be allowed or made after three and one-half years from the date

prescribed for filing the return (plus any extension of time granted for filing the return, but only if filed within the extended time) or after two years from the date of overpayment, whichever period is longer, unless before the expiration of the period a claim is filed by the taxpayer. For this purpose an income tax return or amended return claiming an overpayment shall constitute a claim for refund.

(b) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable if a claim was filed on the date the credit or refund is allowed.

(c) If a claim relates to an overpayment on account of a failure to deduct a loss due to a bad debt or to a security becoming worthless, the claim shall be allowed if filed within seven years from the date prescribed in section 290.42 for the filing of the return, and the refund or credit shall be limited to the amount of overpayment attributable to the loss.

(d) For purposes of this section, the prepayment of tax made through the withholding of tax at the source, or payment of estimated tax, prior to the due date of the tax are considered as having been paid on the last day prescribed by law for the payment of the tax by the taxpayer. A return filed before the due date shall be considered as filed on the due date.

(e) Except as provided in sections 290.92, subdivision 13, and 290.936, interest on the overpayment refunded or credited to the taxpayer shall be allowed at the rate of six percent per annum computed from the date of payment of the tax until the date the refund is paid or credit is made to the taxpayer. However, to the extent that the basis for the refund is a net operating loss carryback, a capital loss carryback or the carryback of a pollution control credit, interest shall be computed only from the end of the taxable year in which the loss occurs or in which the pollution control credit arises.

(f) If a taxpayer reports a change in his federal gross income or deductions, or a renegotiation, or files a copy of his amended federal return, within 90 days as provided by section 290.56, subdivision 2, a refund may be made of any overpayment within one year after such report or amended return is filed.

(g) There is hereby appropriated from the general fund to the commissioner of revenue the amounts necessary to make payments of refunds allowed pursuant to this section.

Subd. 2. **Denial of claim, court proceedings.** If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the taxpayer in the manner prescribed in section 290.46. An appeal from this order may be taken to the Minnesota tax court in the manner prescribed in section 271.06, or the taxpayer may commence an action against the commissioner to recover the denied overpayment. 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. The action in the district court shall be commenced within 18 months following the mailing of the order of denial to the taxpayer. If a claim for refund is filed by a taxpayer and no order of denial is issued within six months of the filing, the taxpayer may commence an action in the district court as in the case of a denial, but the action shall be commenced within two years of the date that the claim for refund was filed.

Subd. 3. **Exceptions.** This section shall not be construed so as to disallow:

(a) a net operating loss carryback to any taxable year authorized by section 290.095 or section 172 of the Internal Revenue Code of 1954, as amended through December 31, 1979, but the refund or credit shall be limited to the amount of overpayment arising from the carryback;

(b) a capital loss carryback by a corporation under section 290.16, provided that the claim for refund or credit is made prior to the expiration of the 15th day of the 45th month following the end of the taxable year of the net capital loss which results in the carryback, and the refund or credit is limited to the amount of overpayment arising from the carryback;

(c) the carryback of a pollution control credit under section 290.06, subdivision 9, provided that the claim for refund or credit is made prior to the expiration of the 15th day of the 46th month (or the 45th month, in the case of a corporation) following the end of the taxable year in which the pollution control credit arises, and the refund or credit is limited to the amount of overpayment arising from the carryback.

Subd. 4. **Consent to extend time.** If the commissioner and the taxpayer have within the periods prescribed in subdivision 1 consented in writing to any extension of time for the assessment of the tax under the provisions of section 290.49, subdivision 8, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the taxpayer have consented to an extension for the assessment of the tax and six months thereafter, provided, however, that the period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

Subd. 5. **Overpayments; credits and refunds.** (a) If the amount allowable as a credit under section 290.92, subdivision 12 (relating to credit for tax withheld at source) or an amount determined to be an overpayment under section 290.93, subdivision 9, exceeds the taxes imposed by this chapter against which such credit is allowable the amount of such excess shall be considered an overpayment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which such amount was paid.

(b) Notwithstanding any other provision of law to the contrary, in the case of any overpayment the commissioner, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of Minnesota income tax on the part of the person who made the overpayment or against any liability in respect to Minnesota income tax on the part of either spouse who shall have filed a joint return for the taxable year in which the overpayment was made and shall refund any balance of more than one dollar to such person if the taxpayer shall so request.

The commissioner is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the commissioner to be an overpayment of the income tax for a preceding taxable year.

History: *1933 c 405 s 47; 1939 c 446 s 15,19; 1941 c 550 s 18,22; 1943 c 656 s 16; 1945 c 604 s 21; 1947 c 635 s 15; 1949 c 734 s 14; 1951 c 649 s 5-7; 1953 c 625 s 1; 1957 c 771 s 1; Ex1959 c 58 s 2; 2Ex1961 c 1 s 4; 1965 c 390 s 1; 1969 c 325 s 4; 1969 c 399 s 49; 1969 c 1041 s 1; 1971 c 37 s 1; 1973 c 20 s 1; 1973 c 492 s 14; 1975 c 349 s 18-20; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32 (2394-47)*

290.501 CLAIM FOR REFUND OF SALES TAX.

A person entitled to a refund of sales tax pursuant to section 297A.35, subdivision 3, shall claim such refund on his Minnesota income tax return, or if the person is not required to file an income tax return, upon such form as the commissioner may prescribe. The claim shall apply to the taxable year covered by the return upon which the claim is made or, if no return is required, then to a calendar year. If no return is required, the claim shall be filed on or before April 15 for the preceding calendar year. Each claim shall be accompanied by a

certificate from the electrical retailer furnishing the claimant with electricity to the effect that such electrical retailer has not previously filed a claim for refund of tax in respect to the purchase for which the claim is made.

The commissioner, within the applicable period of limitations, may offset the amount of the claim against any liability of the person for income tax and pay the balance due, if any, to the claimant. All payments pursuant to this section shall be made from the general fund in amounts equal to the credits and payments authorized by section 297A.35, subdivision 3. So much money as is needed therefor is annually appropriated from the general fund. The provisions of appeals from this section shall be governed by section 297A.35.

History: *1969 c 399 s 49; 1969 c 1049 s 2*

290.51 AGREEMENTS.

Subdivision 1. **Authority to make.** The commissioner, or any officer or employee of the state income tax department authorized in writing by the commissioner, is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person or estate for whom he acts, in respect of any state income and franchise tax for any taxable period ending prior to the date of the agreement.

Subd. 2. **Approval.** If such agreement is approved by the commissioner within such time as may be stated in the agreement, or later agreed to, such agreement shall be final and conclusive; and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the state; and, in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

History: *1939 c 446 s 18 (2394-50a)*

290.52 ADMINISTRATION, ENFORCEMENT.

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. The commissioner shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this chapter. The commissioner may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commissioner, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their case. Such commissioner may, after due notice and opportunity for hearing, suspend and disbar from further practice before him, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations.

History: *1933 c 405 s 50; Ex1937 c 49 s 27; 1939 c 446 s 17; 1943 c 656 s 18; 1955 c 126 s 1 (2394-50)*

290.53 PENALTIES, INTEREST.

Subdivision 1. **Failure to pay tax.** If any tax imposed by this act, or any portion thereof, is not paid within the time herein specified for the payment thereof, or within 30 days after final determination of an appeal to the tax court relating thereto, there shall be added thereto a specific penalty equal to ten percent of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. Interest accruing upon the tax due as disclosed by the return or upon the amount determined as a deficiency from the date prescribed for the payment of the tax (if the tax is payable in installments, from the date the installment or installments become due and payable under the provisions of section 290.45, subdivision 1) shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under section 290.45, subdivision 2, interest shall be paid 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. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

Subd. 2. **Failure to make and file return, not due to wilful neglect.** In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law, unless it is shown that such failure is not due to wilful neglect, there shall be added to the tax in lieu of the penalty provided in subdivision 1: ten percent 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. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, and the amount of said tax together with the amount so added shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

For the purposes of this subdivision the amount of any taxes required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

Subd. 3. **Failure to file, filing false or fraudulent return; intent to evade tax; 50 percent penalty.** If any person, with intent to evade the tax imposed by this act, shall fail to file any return required by this act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to 50 percent of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this section. This amount shall be in lieu of any amount determined under subdivision 3a.

Subd. 3a. **Intentional disregard of rules and regulations.** If any part of any additional assessment, as determined under section 290.46, is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to five percent of such additional assessment.

Subd. 4. **Failure to file, filing false or fraudulent return; intent to evade tax; criminal provisions.** In addition to the penalties hereinbefore prescribed, (a) Any person required by this act to make a return, who knowingly fails to make such a return at the time required by law, shall be guilty of a misdemeanor; (b) Any person who wilfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he knows to be false and untrue as to any material matter, shall be guilty of a felony. Notwithstanding the provisions of sections 628.26 and 628.30, or any other provision of the criminal laws of this state, an indictment may be found and filed, or an information filed, upon any criminal offense specified in this subdivision, in the proper court within six years and six months after the commission of the offense. The term "person" as used in this subdivision 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. **Allocation of payments.** All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 6. [Repealed, 1980 c 419 s 46]

History: *1933 c 405 s 49; Ex1937 c 49 s 25; 1941 c 550 s 19; 1943 c 656 s 17; 1945 c 604 s 20; 1947 c 635 s 16; 1951 c 606 s 1; 1953 c 634 s 1; 1955 c 766 s 1; 1957 c 890 s 1; 1965 c 397 s 1; 1965 c 698 s 1; 1969 c 97 s 4; 1969 c 325 s 5,6; 1973 c 77 s 1,2; 1975 c 377 s 12,13; 1976 c 134 s 78; 1977 c 307 s 29 (2394-49)*

290.54 TAX A PERSONAL DEBT.

The tax imposed by this chapter, and interest and penalties imposed with respect thereto, shall become a personal debt of the taxpayer from the time the liability therefor arises, irrespective of when the time for discharging such liability by payment occurs. The debt shall, in the case of the personal representative of the estate of a decedent and in the case of any fiduciary, be that of such person in his official or fiduciary capacity only unless he shall have voluntarily distributed the assets held in such capacity without reserving sufficient assets to pay such tax, interest, and penalties, in which event he shall be personally liable for any deficiency. This provision shall apply only to cases in which this state is legally competent to impose such personal liability.

The tax imposed by this chapter, and interest and penalties imposed with respect thereto, shall become a lien upon all of the property, both real and personal, of the taxpayer within this state, except his homestead, from and after the filing by the commissioner of a notice of such lien in the office of the county recorder of the county in which such property is situated, or in the case of personal property belonging to an individual who is not a resident of this state, or which is a corporation, partnership, or other organization, in the office of the secretary of state.

The lien created under this section shall become effective with respect to personal property from and after the date of filing by the commissioner of a notice of such lien describing the property to which the lien attaches in the office of the county recorder of the county in which the commissioner believes the property is located at the time such lien is filed, and with the secretary of state.

The lien imposed on personal property by this section, even though properly filed, shall not be valid as against a purchaser with respect to tangible personal property purchased at retail or as against the personal property listed as exempt in sections 550.37, 550.38, and 550.39.

History: *1933 c 405 s 48; 1975 c 349 s 30; 1976 c 181 s 2; 1977 c 386 s 7 (2394-48)*

290.56 EXAMINATION OF TAXPAYER'S RECORDS; FEDERAL RETURNS; EXTENSIONS.

Subdivision 1. **Powers of examination.** For the purpose of determining the correctness of any return or of determining whether or not any person should have made a return or paid taxes or for the purpose of collection of any such taxes hereunder, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determinations, or collecting such tax, including the taxpayer's retained copy of his return of income to the United States government for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the taxpayer or any other person or corporation. He shall further have power to require the attendance of any taxpayer or other person having knowledge or information in the premises to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 2. **Change in federal return.** If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, such taxpayer shall report in writing to the commissioner, in such form as he may require, such change or correction, or the results of such renegotiation, within 90 days thereafter, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter a copy of such amended return with the commissioner of revenue.

Subd. 3. **Failure to report change or correction of federal return.** If a taxpayer shall fail to report a change or correction or renegotiation by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file a copy of an amended return as required by subdivision 2, the commissioner may, within six years thereafter, recompute the tax based upon such information as may be available to him, notwithstanding any period of limitations to the contrary.

Subd. 4. **Report made of change or correction of federal return.** If a taxpayer is required to report a change or correction or renegotiation by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or to file an amended return as required by subdivision 2 and does report such change or files a copy of such amended return, the commissioner may recompute and reassess the tax due under this chapter, including a refundment thereof (a) within one year after such report or amended return is filed with the commissioner, notwithstanding any period of limitations to the contrary or (b) within the period set forth in section 290.49, whichever period is greater.

Subd. 5. **Extensions of time.** Any taxpayer who consents to any extension of time for the assessment of federal income taxes shall within 90 days of the execution of such consent notify the commissioner and the period of time in which the commissioner may recompute the tax is also extended, notwithstanding any period of limitations to the contrary as follows:

(a) For the periods provided in subdivisions 3 and 4; or

(b) For six months following the expiration of the extended federal period of limitations where no change is made by the federal authority.

History: *1933 c 405 s 51; 1957 c 767 s 1; 1963 c 355 s 13; 1969 c 1042 s 1; 1971 c 55 s 1; 1973 c 582 s 3 (2394-51)*

290.57 EXAMINERS, APPOINTMENT OF.

For the purpose of making such examinations and determinations, the commissioner may appoint such officers, to be known as income tax examiners, as he may deem necessary. If the commissioner deems it advisable, he may request the legislative auditor, for such period of time as he may direct, to audit such returns and conduct such examinations, and report thereon to the commissioner. Upon such request being made, the legislative auditor shall appoint such income tax examiners as he may deem necessary.

History: *1933 c 405 s 52; 1973 c 492 s 14 (2394-52)*

290.58 EXAMINERS, POWERS OF.

Such income tax examiners, whether appointed by the commissioner or by the legislative auditor, shall have all the rights and powers with reference to the examining of books, records, papers, or memoranda, and with reference to the subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony conferred upon the commissioner by this chapter. The clerk of any court of record, or any justice of the peace, upon demand of any such examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before such examiner. The commissioner may also issue subpoenas for the appearance of witnesses before him or before such examiners. The commissioner may appoint such referees as he deems necessary to review, singly or as a board of review, the reports of the income tax examiners and petitions or complaints of taxpayers, and report thereon to the commissioner. Disobedience of subpoenas issued under this chapter shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court.

History: *1933 c 405 s 53; 1973 c 492 s 14 (2394-53)*

290.59 ADDITIONAL HELP.

The commissioner, and the legislative auditor if requested to conduct examinations as hereinbefore provided, may appoint and employ such additional help, or purchase such supplies or materials or incur such other expenditures in the enforcement of this chapter as they may deem necessary. The salaries of all officers and employees provided for in this chapter shall be fixed by the commissioner, where appointed by him, and by the legislative auditor, where appointed by him, subject to the approval of the commissioner of administration.

History: *1933 c 405 s 54; 1973 c 492 s 14 (2394-54)*

290.60 EXPENSES OF ADMINISTRATION.

All the expenses of the administration of this chapter shall be paid out of the receipts therefrom as other moneys of the state are expended by the departments incurring the same, and there is hereby appropriated out of such receipts so much thereof as may be necessary therefor.

Expenses of the administration of this chapter as provided for herein shall include fees and expenses incurred by the Attorney General in litigation for the collection of the taxes provided for in this chapter. None of said departments may expend any money for any of the purposes of this chapter after February 15, 1935, unless the same shall be appropriated by the legislature.

History: *1933 c 405 s 55; 1943 c 115 s 1 (2394-55)*

290.61 PUBLICITY OF RETURNS, INFORMATION.

It shall be unlawful for the commissioner or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter, or any infor-

mation concerning, the taxpayer's affairs acquired from his or its records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such return or to comply with the provisions of section 290.612. The commissioner may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein. Prior to the release of any information to any official of the United States or any other state under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that he will protect the confidentiality of the returns and information revealed thereby to the extent that it is protected under the laws of the state of Minnesota. The commissioner and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this chapter. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof. Upon request of a majority of the members of the senate tax committee or of the house tax committee or the tax study commission, the commissioner shall furnish abstracted financial information to those committees for research purposes from returns or reports filed pursuant to this chapter, provided that he shall not disclose the name, address, social security number, business identification number or any other item of information associated with any return or report which the commissioner believes is likely to identify the taxpayer. The commissioner shall not furnish the actual return, or a portion thereof, or a reproduction or copy of any return or portion thereof. "Abstracted financial information" means only the dollar amounts set forth on each line on the form including the filing status.

Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

In order to locate the named payee on state warrants issued pursuant to this chapter or chapter 290A and undeliverable by the United States postal service, the commissioner may publish in any English language newspaper of general circulation in this state a list of the name and last known address of the payee as shown on the reports or returns filed with the commissioner. The commissioner may exclude the names of payees whose refunds are in an amount which is less than a minimal amount to be determined by the commissioner. The published list shall not contain any particulars set forth on any report or return. The publication shall include instructions on claiming the warrants.

History: *1933 c 405 s 56; Ex1937 c 49 s 31; 1941 c 18 s 5; 1977 c 387 s 2; 1978 c 621 s 1; 1979 c 14 s 1 (2394-56)*

290.611 DISCLOSURE OF CONTENTS OF TAX RETURNS PROHIBITED IN CERTAIN INSTANCES; PENALTY.

Subdivision 1. No person who prepares, aids in the preparation, processes, consults with respect to or reviews a state or federal tax return for another person, corporation, partnership, association or other taxpayer shall divulge any particulars of such return, except to authorized employees of the department of revenue or of the Internal Revenue Service in the course of an examination, without the written permission of such person, corporation, partnership, association or other taxpayer or the legally appointed representative of such taxpayer if such taxpayer is deceased, incompetent or otherwise unable to give such con-

sent. The provisions of this subdivision shall not apply to disclosure by an employee of the department of revenue or of the Internal Revenue Service to other employees of such department or service where such disclosure is necessary for the effective administration of the tax laws of the state or the federal government.

Subd. 2. The provisions of this section shall not prohibit the furnishing of information by any tax return preparer to a tax return processor for the purpose of obtaining computer services in the preparation of the return.

Subd. 3. The provisions of this section shall not prohibit the furnishing of information by an owner or employee of a business firm to any other owner or employee of the same business firm, whether or not such other person became an owner or employee after such information was received.

Subd. 4. This section shall not be construed to limit the disclosure of tax returns, records, or information to the purchaser, and his employees, in the event of the sale of a business where such business includes the preparation of state or federal income tax returns.

Subd. 5. Any person disclosing any particulars of any tax return, without the written consent of the taxpayer making such return, in violation of the provisions of this section, is guilty of a gross misdemeanor.

History: *1971 c 788 s 1,2; 1973 c 66 s 1; 1973 c 582 s 3*

290.612 INQUIRIES RELATED TO APPLICATIONS FOR LIQUOR LICENSES.

Any county or municipality may request the commissioner of revenue to certify whether or not an applicant for a license to be issued pursuant to section 340.01 or 340.13 is liable for any state or local taxes or assessments which were not paid when they became due. Upon a request from a county or municipality, the commissioner shall certify to the county or municipality the information requested, but shall not certify that the license applicant is liable for any unpaid state or local taxes or assessments if an administrative or court action which questions the amount or validity of the unpaid taxes or assessments has been commenced, or if the appeal period to contest the taxes or assessments has not yet expired.

History: *1978 c 621 s 2*

290.62 MS 1965 [Repealed, Ex1967 c 48 s 91]

290.62 DISTRIBUTION OF REVENUES.

All revenues derived from the taxes, interest, penalties and charges under this chapter shall, notwithstanding any other provisions of law, be paid into the state treasury and credited to the general fund, and be distributed as follows:

(1) There shall, notwithstanding any other provision of the law, be paid from this general fund all refunds of taxes erroneously collected from taxpayers under this chapter as provided herein;

(2) There is hereby appropriated to the persons entitled to payment herein, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

History: *Ex1967 c 48 s 90; 1969 c 399 s 28; Ex1971 c 31 art 20 s 9; 1980 c 419 s 25*

290.621 [Temporary]

290.623 [Repealed, 1947 c 633 s 22]

290.65 TIME LIMITS; PENALTIES.

Subdivision 1. [Repealed, 1977 c 423 art 1 s 15]

Subd. 2. **Time limits extended.** The limitations of time provided by this chapter, as amended, relating to income taxes, and sections 271.01 to 271.20, as amended, relating to the tax court, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the tax court from orders relating to income taxes, and (f) appealing to the supreme court of Minnesota from decisions of the tax court relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is, or has been continuously and for more than 90 days outside the United States, and for a further period of six months after his return to the United States.

Subd. 3. **Interest, penalties.** No interest upon any income tax shall be assessed or collected from any individual with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 2; provided, that interest shall accrue, notwithstanding such extension, for such part of said period as the individual is not serving in the Armed Forces of the United States or the United Nations. No penalty shall be assessed against or collected from any individual by reason of failure, during the extension of the periods of time as provided in subdivision 2, to perform any act required by the laws prescribed in said subdivision. No interest shall be paid upon any income tax refund to any individual with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 2.

Subd. 4. **Time limit for assessment extended.** The limitations of time for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 2 are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided.

For the purpose of this subdivision the period of six months after return to the United States, as provided in subdivision 2, shall not begin to run until written notice of such return is filed with the commissioner of revenue.

Subd. 5. **Time period for acts unaffected.** Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 2, within which any act is required or permitted to be done.

Subd. 6. **United States.** The term "United States" as used in this section does not include Canal Zone or the Caribbean Islands.

Subd. 7. **Time for acts; effect of appointment of personal representative, guardian.** The provisions of subdivision 2 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of a personal representative, or guardian, in this state, for any individual described therein except as provided in subdivision 16.

Subd. 8. [Repealed, 1980 c 419 s 46]

Subd. 9. **Time limits, additional extension in certain cases.** The limitations of time provided by this chapter relating to income taxes, and sections 271.01 to 271.20, as amended relating to the tax court, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the tax court from orders relating to income taxes, and (f) appealing to the supreme court from decisions of the tax court relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is or has been serving in the Armed Forces of the United States, or the United Nations, and for a further period of six months after the termination of

such service, provided, that the ability of such individual to file the return, pay the tax or any part thereof, or any interest or penalty thereon, or to perform any other act described in this subdivision is materially impaired by reason of such service, but if an extension of time is granted, the fact that such individual's ability to pay was not impaired, shall not prevent the operation of the extensions of time herein provided. The commissioner may by regulation require the filing of a statement or affidavit or other proof, at the time the return or tax is due or other act is required to be done, stating the fact of inability to comply with the requirements of law because of service in the Armed Forces of the United States or the United Nations.

Subd. 10. **Interest, penalties; additional extension.** No interest upon any income tax shall be assessed or collected from any individual, and no interest shall be paid upon any income tax refund to any individual, with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 9. No penalty shall be assessed or collected from any such individual by reason of failure during such period to perform any act required by the laws described in subdivision 9.

Subd. 11. **Time limit for assessment, additional extension.** The limitations of time provided for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 9, are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided. For the purpose of this subdivision the period of six months after termination of service in the Armed Forces, as provided in subdivision 9, shall not begin to run until written notice of such termination is filed with the commissioner of revenue.

Subd. 12. **Time limit for acts unaffected by additional extension.** Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 9, within which any act is required or permitted to be done.

Subd. 13. **Time for acts; effect of appointment of personal representative, guardian; additional extension.** The provisions of subdivision 9 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of a personal representative, or guardian, in this state, for any individual described therein except as provided in subdivision 16.

Subd. 14. [Repealed, 1980 c 419 s 46]

Subd. 15. [Repealed, 1980 c 419 s 46]

Subd. 16. **Death while in military service.** In the case of any individual who dies while in active service as a member of the military or naval forces of the United States or of any of the United Nations, any income tax imposed under the provisions of this chapter shall not be imposed with respect to the taxable year in which falls the date of his death, and such tax imposed for any prior taxable year which is unpaid at the date of his death (including additions to the tax, interest and penalties) shall not be assessed, and if assessed, the assessment shall be abated. In addition, upon the filing of a claim for refund within seven years from the date the return was filed, the tax paid or collected with respect to any taxable year beginning after December 31, 1949, during which such decedent was in active service shall be refunded.

Subd. 17. **Abatement.** The commissioner of revenue shall have power, with respect to individuals referred to in this section, to abate penalties and interest when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general.

History: *1943 c 107 s 1; 1945 c 604 s 15; 1947 c 635 s 17; 1951 c 648 s 1-3; 1965 c 51 s 62,63; 1965 c 698 s 3; 1967 c 76 s 1; 1971 c 45 s 1; 1973 c 582 s 3; 1975 c 349 s 30; 1976 c 134 s 78; 1977 c 307 s 29; 1980 c 419 s 26-30*

290.66 [Repealed, 1980 c 419 s 46]

290.67 [Repealed, 1965 c 45 s 73]

290.68 [Repealed, 1980 c 419 s 46]

290.69 [Repealed, 1980 c 419 s 46]

290.91 DESTRUCTION OF RETURNS.

The commissioner of revenue is hereby authorized to destroy all income tax returns, including audit reports, orders and correspondence relating thereto, which have been on file in his office for a period of five years or more. The commissioner may, in his discretion, make copies of such returns, orders or correspondence by microfilm, photostat or other similar means and may immediately destroy the original documents from which such copies have been made. Such copies, when certified to by the commissioner, shall be admissible in evidence in the same manner and be given the same effect as the original documents destroyed.

The commissioner may, in his discretion, destroy correspondence and documents contained in the files of the division which do not relate specifically to any income tax return.

Notwithstanding the above provisions (or the provisions of section 290.61) the commissioner may, utilizing such safeguards as he in his discretion deems necessary, employ a commercial photographer for the purpose of developing microfilm of returns or other documents.

History: *1945 c 604 s 27; 1947 c 92 s 1; 1965 c 398 s 1; 1967 c 120 s 1; 1973 c 582 s 3*

290.92 TAX WITHHELD AT SOURCE UPON WAGES.

Subdivision 1. **Definitions.** (1) **Wages.** For purposes of this section, the term "wages" means all remuneration, other than fees paid to a public official for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid

(a) For agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954, as amended through December 31, 1979, or

(b) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, or

(c) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day, service not in the course of the employer's trade or business, or,

(ii) Such individual was regularly employed (as determined under (i)) by such employer in the performance of such service during the preceding calendar quarter, or,

(d) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, or,

(e) (i) For services performed by an individual under the age 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or

(ii) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back, or

(f) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash, or

(g) To, or on behalf of, an employee or his beneficiary, from or to a trust described in section 290.26, which is exempt from tax under section 290.05, at the time of such payment, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or under or to an annuity plan which, at the time of such payment, meets the requirements of section 290.26;

(2) **Payroll period.** For purposes of this section the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, bi-weekly, semi-monthly, monthly, quarterly, semi-annual, or annual payroll period.

(3) **Employee.** For purposes of this section the term "employee" means any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, and every nonresident individual performing services within the state of Minnesota, the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation, and an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(4) **Employer.** For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, and corporations transacting business in or deriving any income from sources within the state of Minnesota for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have legal control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having legal control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under section 290.05 and further includes, but is not limited to, officers of corporations who have legal control, either individually or jointly with another or others, of the payment of the wages.

(5) **Number of withholding exemptions claimed.** For purposes of this section, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under subdivision 5, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

Subd. 2. [Repealed, Ex1967 c 32 art 14 s 12]

Subd. 2a. **Collection at source.** (1) **Deductions.** Every employer making payment of wages shall deduct and withhold upon such wages a tax as provided in this section.

(2) **Withholding on payroll period.** The employer shall withhold the tax on the basis of each payroll period or as otherwise provided in this section.

(3) **Withholding tables.** Unless the amount of tax to be withheld is determined as provided in subdivision 3, the amount of tax to be withheld for each individual shall be based upon tables to be prepared and distributed by the commissioner. The tables shall be computed for the several permissible withholding periods and shall take account of exemptions allowed under this section; and the amounts computed for withholding shall be such that the amount withheld for any individual during his taxable year shall approximate in the aggregate as closely as possible the tax which is levied and imposed under this chapter for that taxable year, upon his salary, wages, or compensation for personal services of any kind for the employer, and shall take into consideration the allowable deduction for federal income tax and the deduction allowable under section 290.09, subdivision 15, and the credits against the tax allowable under the Minnesota income tax act.

(4) **Miscellaneous payroll period.** If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

(5) **Miscellaneous payroll period.** (a) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(b) In any case in which the period, or the time described in clause (a), in respect of any wages is less than one week, the commissioner, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(6) **Wages computed to nearest dollar.** If the wages exceed the highest bracket, in determining the amount to be deducted and withheld under this subdivision, the wages may, at the election of the employer, be computed to the nearest dollar.

(7) **Regulations on withholding.** The commissioner may, by regulations, authorize employers:

(a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(b) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

(c) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this paragraph (7).

(8) **Additional withholding.** The commissioner is authorized to provide by regulation, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this subdivision and subdivision 3 in cases in which the employer and the employee agree to such

additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this section.

Subd. 2b. [Expired]

Subd. 3. **Withholding, irregular period.** If payment of wages is made to an employee by an employer

(a) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employees by such employer, or

(b) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(c) With respect to a period beginning in one and ending in another calendar year, or

(d) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of or pays, the wages payable by another employer to such employee.

The manner of withholding and the amount to be deducted and withheld under subdivision 2a shall be determined in accordance with regulations prescribed by the commissioner under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

Subd. 4. **Remuneration, when not "wages".** If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

Subd. 4a. **Tax withheld from nonresidents.** (1) **"Wages" paid to nonresident employees.** For the purposes of this section: The term "wages" means all remuneration taxable under this chapter including all remuneration paid to a nonresident employee for services performed in this state.

(2) **"Employer", "wages" and "employee" concerning nonresidents.** Notwithstanding any other provision of this section, under rules and regulations to be prescribed by the commissioner of revenue, for purposes of this section any person having control, receipt, custody, disposal or payment of compensation taxable under this chapter and earned by a nonresident for personal services, shall be deemed an employer, any compensation taxable under this chapter and earned by a nonresident for personal services shall be deemed wages, and a nonresident entitled to compensation taxable under this chapter and earned by him for personal services shall be deemed an employee.

(3) **Nonresidents, employer's duty.** The employer of any employee domiciled in a state with which Minnesota has reciprocity under section 290.081 is not required to withhold under this chapter from the wages earned by such employee in this state.

Subd. 5. **Exemptions.** (1) **Entitlement.** An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(a) One exemption for himself;

(b) One additional exemption for himself, if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable a credit for the taxable year under section 290.06, subdivision 3(4) (a) or (c) for having attained the age of 65 before the close of such year;

(c) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to exist a credit for the taxable year under section 290.06, subdivision 3(4) (b) or (c) for being blind at the close of such year;

(d) If the individual is married, any exemption to which his spouse is entitled, or would be entitled, under subparagraph (a), (b) or (c), if such spouse were an employee receiving wages, but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(e) One dependent exemption for each dependent as that term is defined in section 290.06, subdivision 3(3).

(2) **Withholding exemption certificate.** Every employee shall before the date of commencement of employment furnish his employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(3) **Effective date of exemption certificate.** Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(4) **New exemption certificate.** A withholding exemption certificate which takes effect under this subdivision shall continue in effect with respect to the employer until another such certificate takes effect under this subdivision. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer, at his option, may continue the old certificate in force with respect to all wages paid on or before the first status determination date, January 1 or July 1, which occurs at least 30 days after the date on which such new certificate is furnished.

(5) **Change of number to reflect next tax year.** If, on any day during the calendar year, the number of withholding exemptions to which the employee may reasonably be expected to be entitled at the beginning of his next taxable year is different from the number to which the employee is entitled on such day, the employee shall in such cases and at such times as the commissioner may prescribe, furnish the employer with a withholding exemption certificate relating to the number of exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he may reasonably be expected to be so entitled. Exemption certificates issued pursuant to this paragraph shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(6) **Change of number.** If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten days thereafter, furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(7) **Form of certificate.** Withholding exemption certificates shall be in such form and contain such information as the commissioner may by regulation prescribe.

(8) **Number may be same as that for federal purposes.** Notwithstanding the provisions of this subdivision, an employee may elect to claim the same number of withholding exemptions that the employee claims for federal withholding purposes.

Subd. 6. **Employer to furnish information.** (1) Every employer required to deduct and withhold tax under subdivision 2a or subdivision 3 shall file with the commissioner of revenue, and pay over the tax required to be withheld under subdivision 2a and subdivision 3 for each quarterly period, on or before the last day of the month following the close of each quarterly period or another reporting period as the commissioner may prescribe and make and file with the commissioner a return and pay over to him the tax required to be withheld under subdivision 2a or subdivision 3, except that, if during any calendar month, other than the last month of the calendar quarter, the aggregate amount of the tax withheld under subdivision 2a or subdivision 3 exceeds $100, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with the commissioner of revenue. However, any such return may be filed on or before the tenth day of the second calendar month following such period if such return shows timely deposits in full payment of such taxes due for such period. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period, may be made on or before the last day of the first calendar month following the close of such period. Every employer, in preparing said quarterly return, shall take credit for monthly deposits previously made in accordance with this subdivision.

In prescribing the reporting period, the commissioner may classify employers according to the amount of their tax liability and may adopt an appropriate reporting period for each class which he deems to be consistent with efficient tax collection. In no event shall the duration of the reporting period be more than one year or less than one month, provided that for employers with annual payrolls of less than $100,000 the reporting period shall be no more frequent than quarterly.

Such return shall be in such form and contain such information as the commissioner may prescribe. The commissioner may grant a reasonable extension of time for making such return or deposit and paying such tax, but no such extension shall be granted for more than six months.

(2) If less than the correct amount of such tax is paid to the commissioner, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the commissioner may prescribe. If such underpayment cannot be so adjusted the amount of the underpayment shall be assessed and collected in such manner and at such times as the commissioner may prescribe.

(3) If any employer fails to make and file any return required by paragraph (1) at the time prescribed therefor, or makes and files a false or fraudulent return, the commissioner shall make for him a return from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof. The amount of tax shown thereon shall be paid to the commissioner at such times as the commissioner may prescribe. Any such return or assessment so made by the commissioner shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(4) If the commissioner, in any case, has reason to believe that the collection of the tax provided for in paragraph (1) of this subdivision, and any added penalties and interest, if any, will be jeopardized by delay, he may immediately assess such tax, whether or not the time otherwise prescribed by law for making and filing the return and paying such tax has expired.

(5) Any assessment under this subdivision shall be made by recording the liability of the employer in the office of the commissioner in accordance with regulations prescribed by the commissioner. Upon request of the employer, the commissioner shall furnish the employer a copy of the record of assessment.

(6) Any assessment of tax under this subdivision shall be made within three and one-half years after the due date of the return required by paragraph (1), or the date the return was filed, whichever is later; except that in the case of a false or fraudulent return or failure to file a return, the tax may be assessed at any time.

(7) (a) Except as provided in (b) of this paragraph, every employer who fails to pay to or deposit with the commissioner any sum or sums required by this section to be deducted, withheld and paid, shall be personally and individually liable to the state of Minnesota for such sum or sums (and any added penalties and interest); and any sum or sums deducted and withheld in accordance with the provisions of subdivision 2a or subdivision 3 shall be held to be a special fund in trust for the state of Minnesota.

(b) If the employer, in violation of the provision of this section, fails to deduct and withhold the tax under this section, and thereafter the taxes against which such tax may be credited are paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this shall in no case relieve the employer from liability for any penalties and interest otherwise applicable in respect of such failure to deduct and withhold.

(8) Upon the failure of any employer to pay to or deposit with the commissioner within the time provided by paragraphs (1), (2) or (3) of this subdivision any tax required to be withheld in accordance with the provisions of subdivision 2a or subdivision 3, or if the commissioner has assessed a tax pursuant to paragraph (4), such tax shall become immediately due and payable, and the commissioner may deliver to the attorney general a certified statement of the tax, penalties and interest due from such employer. The statement shall also give the address of the employer owing such tax, the period for which the tax is due, the date of the delinquency, and such other information as may be required by the attorney general. It shall be the duty of the attorney general to institute legal action in the name of the state to recover the amount of such tax, penalties, interest and costs. The commissioner's certified statement to the attorney general shall for all purposes and in all courts be prima facie evidence of the facts therein stated and that the amount shown therein is due from the employer named in the statement. In event action is instituted as herein provided, the court shall, upon application of the attorney general, appoint a receiver of the property and business of the delinquent employer for the purpose of impounding the same as security for any judgment which has been or may be recovered. Any such action shall be brought within four years and three months after the due date of the return or deposit required by paragraph (1), or the date the return was filed, or deposit made whichever is later; except that in the case of failure to make and file such return or if such return is false or fraudulent, or such deposit is not made such action may be brought at any time.

(9) The tax required to be withheld under subdivision 2a or subdivision 3 or paid to, or deposited with the commissioner under this subdivision, together with penalties, interest and costs, shall become a lien upon all of the real property of the employer within this state, except his homestead, from and after the filing by the commissioner of a notice of such lien in the offices of the county recorder of the county in which such real property is situated.

(10) Either party to an action for the recovery of any tax, interest or penalties under this subdivision may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

(11) No suit shall lie to enjoin the assessment or collection of any tax imposed by this section, or the interest and penalties added thereto.

(12) When any tax is due and payable as provided in paragraph (8) the commissioner may issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer and to levy upon the rights to property of the employer within the county and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the employer and to levy upon the rights to property of the employer within his county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of Minnesota Statutes 1961, Section 550.37, and acts amendatory thereof, and shall sell so much thereof as is required to satisfy such taxes, interest, and penalties, together with his costs; but such sales shall, as to their manner, be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain such part thereof as is required to satisfy the tax, interest, penalties and costs, and pay over any balance to the taxpayer. Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy providing for the collection of taxes required to be withheld by employers.

Subd. 6a. **Failure to comply with withholding provisions.** (a) Whenever any person who is required to deduct, withhold, pay over, or deposit any tax imposed by this chapter, at the time and in the manner prescribed by law or regulations fails to deduct, withhold, or pay over such tax, or fails to make deposits or payments of such tax and is notified of any such failure by notice served upon him in the manner prescribed for service of a summons in civil actions, then all the requirements of paragraph (b) of this subdivision shall be complied with. In the case of a corporation, partnership or trust, notice served upon an officer, partner or trustee shall, for purposes of this subdivision, be deemed to be notice served upon such corporation, partnership or trust and all officers, partners or trustees thereof.

(b) Any person who is required to deduct, withhold, pay over, or deposit any tax imposed by this chapter, if notice has been served upon such person in accordance with paragraph (a) of this subdivision, shall thereafter deduct, withhold and collect such taxes and shall (not later than the end of the second banking day after any amount of such taxes is deducted, withheld or collected) deposit such taxes in a separate account in a bank, savings bank or savings and loan association and shall keep the amount of such taxes in such account until payment over to the state of Minnesota. Any such account shall constitute and be designated as a special fund in trust for the state of Minnesota payable to the state of Minnesota by such person as trustee. It shall be the duty of such person upon whom such notice is served to notify the commissioner of revenue in writing of the name and address of the bank, savings bank or savings and loan association wherein such account is kept, together with such other information as the commissioner may require.

(c) Whenever the commissioner of revenue is satisfied with respect to any notification made under paragraph (a) of this subdivision that all requirements of law and regulations with respect to the taxes imposed by this chapter have been and will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation. All notices authorized or required under this subdivision shall be in such form as the commissioner may determine.

(d) Any person who fails to comply with any provisions of this subdivision shall, in addition to any other penalties provided by law, be guilty of a gross misdemeanor, except that the provisions of this paragraph shall not apply

(1) to any person if such person shows that there was reasonable doubt as to (a) whether the law required deduction, withholding or payment of tax or (b) what person was required by law to deduct, withhold or pay; or

(2) to any person, if such person shows that the failure to comply with the provisions of paragraph (b) of this subdivision is due to circumstances beyond his control. A lack of funds existing immediately after the payment of wages (whether or not created by such payment) shall not be considered to be circumstances beyond the control of a person.

Subd. 7. **Withholding statement to employee and to commissioner.** (1) Every person required to deduct and withhold from an employee a tax under subdivision 2a or subdivision 3, or who would have been required to deduct and withhold a tax under subdivision 2a or subdivision 3, determined without regard to subdivision 19, if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(a) Name of such person,

(b) The name of the employee and his social security account number,

(c) The total amount of wages as that term is defined in subdivision 1(1),

(d) The total amount deducted and withheld as tax under subdivision 2a or subdivision 3.

(2) The statement required to be furnished by this subdivision in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the commissioner may prescribe.

(3) The commissioner may prescribe regulations providing for reasonable extensions of time, not in excess of 30 days, to employers required to furnish such statements to their employees under this subdivision.

(4) A duplicate of any statement made pursuant to this subdivision and in accordance with regulations prescribed by the commissioner shall be filed with the commissioner at such time as he may by regulations prescribe. Such duplicate when so filed shall constitute the information return required to be made in respect of wages, salaries and commissions under section 290.41, subdivision 2.

Subd. 8. **Employer liable for tax withheld.** The employer shall be liable for the payment of the tax required to be deducted and withheld under subdivision 2a or subdivision 3, and shall not be liable to any person for the amount of any such payment.

Subd. 9. **Determination of tax due.** The commissioner may grant permission to employers, who do not desire to use the withholding tax tables provided in accordance with paragraph (3) of subdivision 2a, to determine the amount of tax to be withheld by use of a method of withholding other than withholding tax tables, provided such method will withhold from each employee substantially the same amount of tax as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the commissioner before the beginning of a payroll period for which the employer desires to withhold the tax by such other method. Applications to use such other method must be accompanied by evidence establishing the need for the use of such method.

Subd. 10. **Remuneration, not in cash.** In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this section with respect to such remuneration, provided that such employer files with the commissioner such information with respect to such remuneration as the commissioner may by regulation prescribe.

Subd. 11. **Refunds.** Where there has been an overpayment of tax imposed by this section, refund of such overpayment or credit shall be made to the employer in accordance with regulations prescribed by the commissioner, but only to the extent that the amount of such overpayment was not deducted and withheld under subdivision 2a or subdivision 3 by the employer. Any overpayment which is refunded shall bear interest at the rate of six percent per annum, computed from the date of payment until the date the refund is paid to the employer. The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62 and so much of said fund as may be necessary is hereby appropriated for that purpose. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

Subd. 12. **Withheld amount, credit against tax.** The amount deducted and withheld as tax under subdivision 2a or subdivision 3 during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the taxes imposed by this chapter, for a taxable year beginning in such calendar year. If more than one taxable year begins in such calendar year, such amount shall be allowed as a credit against the taxes for the last taxable year so beginning.

Subd. 13. **Refunds.** (1) Where the amount of the tax withheld at the source under subdivision 2a or subdivision 3 exceeds by $1 or more the taxes (and any added penalties and interest) reported in the return of the employee taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the employee taxpayer. If the amount of such excess is less than $1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds $10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the employee taxpayer or (b) the date on which his return is filed, whichever is later, to the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the employee taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest, to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Subd. 14. **Records must be kept.** Every person liable for any tax imposed by this section, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such regulations, as the commissioner may from time to time prescribe. Any such return or statement shall include therein the information required by such regulations and by the

forms prescribed by the commissioner. For the purpose of determining compliance with the provisions of this subdivision, or for the purpose of collection of any taxes due under this section, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determination, whether such books, papers, records, or memoranda are the property of or in the possession of such person or any other person or corporation. The commissioner shall further have power to require the attendance of any persons having knowledge or information in the premises, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 15. **Penalties.** (1) If any tax required to be deducted and withheld under subdivision 2a or subdivision 3, or any portion thereof, is not paid to or deposited with the commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to ten percent of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid or deposited until paid. Where an extension of time for payment has been granted under the provisions of subdivision 6, interest shall be paid at the rate specified in section 270.75 from the date when such payment or deposit should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this subdivision shall apply.

(2) In the case of any failure to withhold a tax on wages, make and file quarterly returns or make payments to or deposits with the commissioner of amounts withheld, as required by this section, within the time prescribed by law, unless it is shown that such failure is not due to wilful neglect, there shall be added to the tax in lieu of the penalty provided in paragraph (1) a penalty equal to ten percent of the amount of tax that should have been properly withheld and paid over to or deposited with the commissioner 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. The amount so added to the tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(3) If any employer required to withhold a tax on wages, make deposits, make and file quarterly returns and make payments to the commissioner of amounts withheld, as required by sections 290.92 to 290.97, wilfully fails to withhold such a tax or make such deposits, files a false or fraudulent return, wilfully fails to make such a payment or deposit, or wilfully attempts in any manner to evade or defeat any such tax or the payment or deposit thereof, there shall also be imposed on such employer as a penalty an amount equal to 50 percent of the amount of tax (less any amount paid or deposited by such employer on the basis of such false or fraudulent return or deposit) that should have been properly withheld and paid over or deposited with the commissioner. The penalty imposed by this paragraph shall be collected as a part of the tax, and shall be in addition to any other penalties civil and criminal, prescribed by this subdivision.

(4) If any person required under the provisions of subdivision 7 to furnish a statement to an employee and a duplicate statement to the commissioner, wilfully furnishes a false or fraudulent statement to an employee or a false or fraudulent duplicate statement to the commissioner, or wilfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or regulations prescribed by the commissioner

thereunder, there shall be imposed on such a person a penalty of $10 for each such act or failure to act. The penalty imposed by this paragraph shall become due and payable within ten days after the mailing of a written demand therefor, and may be collected in the manner prescribed in subdivision 6(8).

(5) In addition to the penalties hereinbefore prescribed, any person required to withhold a tax on wages, make and file quarterly returns and make payments or deposits to the commissioner of amounts withheld, as required by this section, who wilfully fails to withhold such a tax or truthfully make and file such a quarterly return or make such a payment or deposit, shall be guilty of a gross misdemeanor.

(6) In lieu of any other penalty provided by law, except the penalty provided by paragraph (4), any person required under the provisions of subdivision 7 to furnish a statement to an employee and a duplicate statement to the commissioner, who wilfully furnishes a false or fraudulent statement to an employee or a false or fraudulent duplicate statement to the commissioner, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or regulations prescribed by the commissioner thereunder, shall be guilty of a gross misdemeanor.

(7) Any employee required to supply information to his employer under the provisions of subdivision 5, who wilfully fails to supply information thereunder which would require an increase in the tax to be deducted and withheld under subdivision 2a or subdivision 3, shall be guilty of a misdemeanor.

(8) The term "person," as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(9) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 16. **Agreement with secretary of treasury.** The commissioner is authorized to enter into an agreement with the secretary of treasury of the United States pursuant to the provisions of public law 587 (66 United States Statutes at Large 765), enacted July 17, 1952 and an agreement with the secretary of the treasury of the United States to provide for withholding of state income taxes from pay for service as a member of the armed forces of the United States, pursuant to section 1207 (a) (1) of public law 94-455.

Subd. 17. **Reciprocal arrangement with other states.** The commissioner may enter into an agreement with the commissioner or other taxing officials of another state for the interpretation and administration of the acts of their several states providing for the collection of income tax at source on wages for the purpose of promoting fair and equitable administration of such acts and to eliminate duplicate withholding. Notwithstanding the provisions of section 290.61 the commissioner at his discretion may furnish information on a reciprocal basis to the taxing officials of another state in order to implement the purposes set forth above.

Subd. 18. **Returns; confession of judgment.** Any return that is required to be filed with the commissioner of revenue under this section shall (a) contain a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, and (b) shall contain a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

Subd. 19. **Employees incurring no income tax liability.** Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate, in such form and containing such other information as the commissioner

may prescribe, furnished to the employer by the employee certifying that the employee

(a) incurred no liability for income tax imposed under this chapter for his preceding taxable year, and

(b) anticipates that he will incur no liability for income tax imposed under this chapter for his current taxable year. When an employee anticipates no liability for the current taxable year because of the credit provided by section 290.06, subdivision 3d, no withholding shall be required, clause (a) notwithstanding. The commissioner shall by regulations provide for the coordination of the provisions of this subdivision with the provisions of subdivision 7.

Subd. 20. **Voluntary withholding agreements.** (a) (1) For purposes of this section, any payment of an annuity to an individual to the extent includible in such individual's Minnesota gross income, if at the time the payment is made a request that such annuity be subject to withholding under this section is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) A request that an annuity be subject to withholding under this section shall be made by the payee in writing to the person making the annuity payments, as prescribed by the commissioner. Such a request may, notwithstanding any provision of law to the contrary, be terminated by furnishing to the person making the payments a written statement of termination. Such a request for withholding or statement of termination shall take effect in the same manner such a request or statement would take effect under the laws of the United States except to the extent the commissioner shall by regulation, provide otherwise.

(b) The commissioner is authorized by regulations to provide for withholding

(1) from remuneration for services performed by an employee for his employer which (without regard to this subdivision) does not constitute wages, and

(2) from any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this section, if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may by regulations provide. For purposes of this section remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

Subd. 21. **Extension of withholding to unemployment compensation benefits.** For purposes of this section, any supplemental unemployment compensation benefit paid to an individual to the extent includable in such individual's Minnesota adjusted gross income, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

Subd. 22. **Liability of third parties paying or providing for wages.** (a) For purposes of this section, if a lender, surety, or other person, who is not an employer with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable to the commissioner in a sum equal to the taxes required to be deducted and withheld from such wages by such employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this section to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable personally to the commissioner in a sum equal to the taxes which are not paid over to the commissioner by such employer with respect to such wages.

(c) For purposes of this subdivision, a person shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the person had exercised due diligence. A person exercises due diligence if he maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the person to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(d) Any amounts paid to the commissioner pursuant to this subdivision shall be credited to the liability of the employer.

Subd. 23. **Withholding by employer of delinquent taxes.** (1) The commissioner may give notice to any employer deriving income which has a taxable situs in this state regardless of whether the income is exempt from taxation, that an employee of that employer is delinquent in a certain amount with respect to any state taxes, including penalties, interest and costs. The commissioner can proceed under this subdivision only if the tax is uncontested or if the time for appeal of the tax has expired. The commissioner shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer, at his last known address, a written notice of (a) the amount of taxes, interest, and penalties due from the taxpayer and demand for their payment, and (b) the commissioner's intention to require additional withholding by the taxpayer's employer pursuant to this subdivision. The effect of the notice shall expire 90 days after it has been mailed to the taxpayer provided that the notice may be renewed by mailing a new notice which is in accordance with this subdivision. The renewed notice shall have the effect of reinstating the priority of the original claim. The notice to the taxpayer shall be in substantially the same form as that provided in section 571.41. The notice shall further inform the taxpayer of the wage exemptions contained in section 550.37, subdivision 14. If no statement of exemption is received by the commissioner within 30 days from the mailing of the notice, he may proceed under this subdivision. The notice to the taxpayer's employer may be served by mail or by delivery by an employee of the department of revenue and shall be in substantially the same form as provided in section 571.495. Upon receipt of notice, the employer shall withhold from compensation due or to become due to the employee, the total amount shown by the notice, subject to the provisions of section 571.55. The employer shall continue to withhold each pay period until the total amount shown by the notice is paid in full. Upon receipt of notice by the employer, the claim of the state of Minnesota shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and the employee for withholding a portion of the total amount due the employee each pay period, until the total amount shown by the notice plus accrued interest has been withheld.

The "compensation due" any employee is defined in accordance with the provisions of section 571.55. The maximum withholding allowed under this sub-

division for any one pay period shall be decreased by any amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the department of the amounts and the facts relating to such assignments within ten days after the service of the notice of delinquency on the form provided by the department of revenue as noted in this subdivision. In crediting amounts withheld against delinquent taxes of an employee, the department shall apply amounts withheld in the following order: penalties, interest, tax and costs.

(2) If the employee ceases to be employed by the employer before the full amount set forth in a notice of delinquency plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount withheld. No employer may discharge any employee by reason of the fact that the commissioner has proceeded under this subdivision. If an employer discharges an employee in violation of this provision, the employee shall have the same remedy as provided in section 571.61, subdivision 2.

(3) The employer shall, by the date prescribed in subdivision 6, remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during the calendar quarter under this subdivision. Should any employer, after notice, willfully fail to withhold in accordance with the notice and this subdivision, or willfully fail to remit any amount withheld as required by this subdivision, the employer shall be liable for the total amount set forth in the notice together with accrued interest which may be collected by any means provided by law relating to taxation. No amount required to be paid by an employer by reason of his failure to remit under this subdivision, may be deducted from the gross income of the employer, under sections 290.09, subdivision 4 or 290.01, subdivision 20. Any amount collected from the employer for failure to withhold or for failure to remit under this subdivision shall be credited to the employee's account in the following manner: penalties, interest, tax and costs.

(4) Clauses (1), (2) and (3), except provisions imposing a liability on the employer for failure to withhold or remit, shall apply to cases in which the employer is the United States or any instrumentality thereof or this state or any municipality or other subordinate unit thereof.

(5) The commissioner shall refund to the employee excess amounts withheld from him under this subdivision. If any excess results from payments by the employer because of willful failure to withhold or remit as prescribed in clause (3) above, the excess attributable to the employer's payment shall be refunded to the employer.

(6) Employers required to withhold delinquent taxes, penalties, interest and costs under this subdivision shall not be required to compute any additional interest, costs or other charges to be withheld.

Subd. 24. **Application for account number.** An employer desiring to engage in business in Minnesota shall file with the commissioner an application for a withholding account number on or before the due date of the first payment required to be made under the provisions of subdivision 6. An application for an account number shall be made upon a form prescribed by the commissioner and shall set forth the name of the employer, the location of the place or places of business, the names, addresses and social security numbers of the owners or partners, or if the employer is a corporation of the officers, or if the employer is a trust of the trustees, and such other information as the commissioner may require. The application shall be filed by the owner if the employer is a natural

person; by a member or partner if the employer is an association or partnership; by a trustee if the employer be a trust, or by a person authorized to sign the application if the employer is a corporation.

No fee shall be charged for the application.

The account number is not assignable.

An employer who fails to file an application for a withholding account number shall be liable to the commissioner for a penalty of $100. The penalty shall be collected in the same manner as delinquent withholding tax is collected. The commissioner may abate this penalty.

History: *1961 c 213 art 1 s 1; Ex1961 c 91 art 2 s 1-3,7; 1963 c 355 s 15-17; 1963 c 666 s 1,2; 1965 c 464 s 2; 1965 c 884 art 1 s 7; 1967 c 42 s 2; 1967 c 587 s 1; 1967 c 902 s 1; Ex1967 c 32 art 14 s 11; 1969 c 97 s 5; 1969 c 325 s 7-9; 1969 c 326 s 1; 1969 c 399 s 29,30; 1969 c 654 s 1; 1971 c 55 s 2; 1971 c 147 s 1,2; 1971 c 510 s 1; 1971 c 514 s 1; 1971 c 729 s 1; 1971 c 769 s 2; Ex1971 c 31 art 18 s 5; 1973 c 73 s 1-8; 1973 c 492 s 14; 1973 c 501 s 4-12; 1973 c 582 s 3; 1973 c 711 s 3; 1974 c 60 s 1; 1975 c 349 s 21,22,29; 1975 c 377 s 14,15; 1976 c 2 s 110; 1976 c 181 s 2; 1977 c 111 s 1,2; 1977 c 258 s 1; 1977 c 386 s 8; 1978 c 766 s 8; 1980 c 419 s 31-34; 1980 c 607 art 1 s 32*

290.921 [Repealed, 1978 c 721 art 5 s 1]

290.922 [Repealed, 1978 c 721 art 5 s 1]

290.93 DECLARATION OF ESTIMATED TAX.

Subdivision 1. **Requirement of declaration.** (1) Every individual shall, at the time prescribed in subdivision 5 of this section, make and file with the commissioner a declaration of his estimated tax for the taxable year if

(a) The gross income (as defined in section 290.01, subdivision 20) for the taxable year can reasonably be expected to exceed the gross income amounts set forth in section 290.37, subdivision 1 pertaining to the requirements for making a return; and

(b) Such gross income can reasonably be expected to include more than $500 from sources other than wages upon which a tax has been deducted and withheld under section 290.92, subdivision 2a or subdivision 3.

(2) If the individual is an infant or incompetent person, the declaration shall be made by his guardian.

(3) Notwithstanding the provisions of this section, no declaration is required if the estimated tax (as defined in subdivision 3) can reasonably be expected to be less than $50.

Subd. 2. **Joint declaration.** A joint declaration may be made by husband and wife, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if they are separated under a decree of legal separation or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife or may be divided between them.

Subd. 3. **Estimated tax defined.** For purposes of this section, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the sum of the taxes imposed by this chapter, for the taxable year, minus the amount which the individual estimates as his allowable credits against income tax under this chapter.

Subd. 4. **Commissioner to prescribe declaration.** The declaration shall be in such form and shall contain such information as the commissioner may prescribe.

Subd. 5. **Date required.** (1) Declarations of estimated tax required by subdivision 1 from individuals other than farmers shall be filed on or before April 15 of each taxable year, except that if the requirements of subdivision 1 are first met

(a) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(b) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(c) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) Declarations of estimated tax required by subdivision 1 from individuals whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in paragraph (1) be filed at any time on or before January 15 of the succeeding taxable year.

(3) An individual shall make amendments of a declaration filed during the taxable year, under regulations prescribed by the commissioner.

(4) If on or before January 31 (or March 1, in the case of an individual referred to in paragraph (2)) of the succeeding taxable year the taxpayer files a return for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the commissioner

(a) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(b) If the tax shown on the return is greater than the estimated tax shown in the declaration previously made or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by paragraph (3) to be filed on or before January 15.

(5) The commissioner may grant a reasonable extension of time for filing the declaration and paying the estimated tax. Except in the case of a taxpayer who is outside the continental limits of the United States, no such extension shall be granted for more than six months.

Subd. 6. **Time payment required.** (1) The amount of estimated tax with respect to which a declaration is required by subdivision 1 shall be paid at the time of the filing of the declaration if it does not exceed $10. If the amount of the estimated tax exceeds $10, it shall be paid as follows:

(a) If the declaration is filed on or before April 15 of the taxable year, it shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(b) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by subdivision 5(1) of this section to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(c) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by subdivision 5(1) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(d) If the declaration is filed after September 15 of the taxable year, and is not required by subdivision 5(1) or (2) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(e) If the declaration is filed after the time prescribed in subdivision 5(1) or (2) including cases in which an extension of time for filing the declaration has been granted under subdivision 5(5), subparagraphs (b), (c), and (d) of this paragraph shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subdivision 5(1) or (2), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(2) If an individual referred to in subdivision 5(2) (relating to income from farming) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(3) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect such increase or decrease in the estimated tax by reason of such amendment, and if such amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(4) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(5) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the taxes imposed upon the individual by this chapter, for the taxable year.

Subd. 7. **Fiscal year.** The application of this section to taxable years beginning other than January 1, and to taxable years of less than 12 months, shall be made pursuant to regulations issued by the commissioner.

Subd. 8. **Exception, estates and trusts.** The provisions of this section shall not apply to an estate or trust.

Subd. 9. **Overpayment of estimated tax.** (1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments plus (a) the total amount of tax withheld at the source under section 290.92, subdivision 2a or subdivision 3 (if any) and (b) and other payments (if any) exceeds by $1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than $1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds $10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Subd. 10. **Underpayment of estimated tax.** (1) In the case of any underpayment of estimated tax by an individual, except as provided in paragraph (4), there may be added to and become a part of the taxes imposed by this chapter, for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment for the period of the underpayment.

(2) For purposes of the preceding paragraph, the amount of underpayment shall be the excess of

(a) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent (66 2/3 percent in the case of farmers referred to in subdivision 5(2) of this section) of the taxes shown on the return for the taxable year or the taxes for such year if no return was filed, over

(b) The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(3) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier

(a) The 15th day of the fourth month following the close of the taxable year.

(b) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this sub-paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under paragraph (2) (a) for such installment date.

(4) The addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser

(a) The total tax liability shown on the return of the individual for the preceding taxable year (if a return showing a liability for such taxes was filed by the individual for the preceding taxable year of 12 months), or

(b) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to credits allowed by section 290.06, subdivision 3c, for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to the preceding taxable year, or

(c) An amount equal to 70 percent (66 2/3 percent in the case of farmers referred to in subdivision 5(2) of this section) of the tax for the taxable year (after deducting personal credits) computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this sub-paragraph, the taxable income shall be placed on an annualized basis by

(i) Multiplying by 12 (or in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income computed for the months in the taxable year ending before the month in which the installment is required to be paid.

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or

(d) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(5) For the purposes of applying this subdivision, the estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 290.92, subdivision 12 (relating to tax withheld at source on wages), and the amount of such credit for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under subdivisions 6 and 7 of this section) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(6) The application of this subdivision to taxable years of less than 12 months shall be in accordance with regulations prescribed by the commissioner.

Subd. 11. **Failure to pay.** Any individual required under this section to pay any estimated tax, who wilfully fails to pay such estimated tax at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a gross misdemeanor.

Subd. 12. [Repealed, 1980 c 419 s 46]

History: *1961 c 213 art 1 s 2; Ex1961 c 91 art 2 s 4; 1963 c 355 s 18; 1969 c 6 s 35,36; 1969 c 325 s 10; 1969 c 399 s 31,32; 1971 c 36 s 1; 1973 c 19 s 1; 1973 c 43 s 1; 1973 c 273 s 1,2; 1973 c 492 s 14; 1975 c 377 s 16; 1978 c 772 s 62; 1980 c 419 s 35,36*

290.931 DECLARATIONS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. **Requirements of declaration.** Every corporation subject to taxation under this chapter (excluding section 290.92) shall make a declaration of estimated tax for the taxable year if its tax liability so computed can reasonably be expected to exceed $1,000.

Subd. 2. [Repealed, 1975 c 349 s 31]

Subd. 3. **Contents of declaration.** The declaration shall contain such pertinent information as the commissioner may by forms or regulations prescribe.

Subd. 4. **Amendment of declaration.** A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the commissioner.

Subd. 5. **Short taxable year.** A corporation with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the commissioner.

History: *1965 c 884 art 2 s 1; 1975 c 349 s 23; 1980 c 419 s 37*

290.932 TIME FOR FILING DECLARATIONS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. **General rule.** The declaration of estimated tax required of corporations by section 290.931 shall be filed as follows:

If the requirements of section 290.931 are first met -	The declaration shall be filed on or before -
before the 1st day of the 3rd month of the taxable year	the 15th day of the 3rd month of the taxable year
after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year	the 15th day of the 6th month of the taxable year
after the last day of	the 15th day of the 9th month

the 5th month and before the 1st day of the 9th month of the taxable year	of the taxable year
after the last day of the 8th month and before the 1st day of the 12th month of the taxable year	the 15th day of the 12th month of the taxable year

Subd. 2. **Amendment.** An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval.

Subd. 3. **Short taxable year.** The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the commissioner.

Subd. 4. **Extension of time for filing returns.** The commissioner may grant a reasonable extension of time for filing any return, declaration, statement or other document required by this act. No such extension shall be for more than six months.

Subd. 5. [Repealed, 1980 c 419 s 46]

History: *1965 c 884 art 2 s 2; 1980 c 419 s 38*

290.933 INSTALLMENT PAYMENTS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. **Amount and time for payment of each installment.** The amount of estimated tax with respect to which a declaration is required under section 290.931 shall be paid as follows:

(1) **Payment in four installments.** If the declaration is filed on or before the 15th day of the 3rd month of the taxable year, the estimated tax shall be paid in four equal installments on the 15th day of the 3rd, 6th, 9th and 12th month of the taxable year.

(2) **Payment in three installments.** If the declaration is filed after the 15th day of the 3rd month and not after the 15th day of the 6th month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such 3rd month, the estimated tax shall be paid in three equal installments on the 15th day of the 6th, 9th and 12th month of the taxable year.

(3) **Payment in two installments.** If the declaration of estimated tax is filed after the 15th day of the 6th month and not after the 15th day of the 9th month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such 6th month, the estimated tax shall be paid in two equal installments on the 15th day of the 9th and 12th month of the taxable year.

(4) **Payment in one installment.** If the declaration of estimated tax is filed after the 15th day of the 9th month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such 9th month, the estimated tax shall be paid in one installment.

(5) **Late filing.** If the declaration is filed after the time prescribed in section 290.932, subdivision 1 (determined without regard to any extension of time for filing the declaration under section 290.932, subdivision 4), paragraphs (2), (3), and (4) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 290.932, subdivision 1, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

Subd. 2. **Amendment of declaration.** If any amendment of a declaration is filed, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased (as the case may be), by the amount computed by dividing

(1) the difference between (A) the amount of estimated tax required to be paid before the date on which the amendment is made, and (B) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by

(2) the number of installments remaining to be paid on or after the date on which the amendment is made.

Subd. 3. **Application to short taxable year.** The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the commissioner.

Subd. 4. **Installments paid in advance.** At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

History: *1965 c 884 art 2 s 3; 1975 c 349 s 24*

290.934 FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

Subdivision 1. **Addition to the tax.** In case of any underpayment of estimated tax by a corporation, except as provided in subdivision 4, there shall be added to the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment (determined under subdivision 2) for the period of the underpayment (determined under subdivision 3).

Subd. 2. **Amount of underpayment.** For purposes of subdivision 1, the amount of the underpayment shall be the excess of

(1) the amount of the installment, over

(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

Subd. 3. **Period of underpayment.** The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier

(1) The 15th day of the third month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision 2(1) for such installment date.

Subd. 4. **Exception.** Notwithstanding the provisions of the preceding subdivisions, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

(1) The tax shown on the return of the corporation for the preceding taxable year reduced by $1,000, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

Subd. 5. **Definition of tax.** The term "tax" means the excess of the tax imposed by chapter 290 over $1,000.

Subd. 6. **Short taxable year.** The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the commissioner.

Subd. 7. **Failure to file an estimate.** In the case of a corporation which fails to file an estimated tax for a taxable year when one is required, the period of the underpayment shall run from the four installment dates as set forth in section 290.933, subdivision 1, clause (1), to whichever of the periods set forth in subdivision 3, clauses (1) and (2), is the earlier.

History: *1965 c 884 art 2 s 4; 1971 c 96 s 1; 1975 c 377 s 17; 1977 c 386 s 9*

290.935 PAYMENT ON ACCOUNT.

Payment of the estimated tax or any installment thereof shall be considered payment on account of the taxes imposed by this chapter, for the taxable year.

History: *1965 c 884 art 2 s 5*

290.936 OVERPAYMENT OF ESTIMATED TAX.

(1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments and other payments, if any, exceeds by $1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than $1, the commissioner shall not be required to refund. Where any amount of such excess to be refunded exceeds $10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

History: *1969 c 325 s 11; 1969 c 399 s 49; 1973 c 43 s 2; 1973 c 492 s 14; 1980 c 419 s 39*

290.94 MS 1974 [Expired]
290.95 [Repealed, 1980 c 419 s 46]
290.96 [Repealed, 1980 c 419 s 46]

290.97 CONTRACTS WITH STATE; WITHHOLDING.

No department of the state of Minnesota, nor any political or governmental subdivision of the state shall make final settlement with any contractor under a contract requiring the employment of employees for wages by said contractor, until satisfactory showing is made that said contractor has complied with the provisions of section 290.92. A certificate by the commissioner of revenue shall satisfy this requirement.

History: *1961 c 213 art 1 s 6; 1973 c 582 s 3; 1980 c 419 s 40*

290.971 ELECTION OF CERTAIN SMALL BUSINESS CORPORATIONS AS TO TAXABLE STATUS; DEFINITIONS.

Subdivision 1. **Small business corporation.** For purposes of this chapter, the term "small business corporation" means a domestic corporation of the United States which is not a member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1954, as amended through December 31, 1979) and which does not

(1) have more than 15 shareholders;

(2) have as a shareholder a person (other than an estate and other than a trust described in subdivision 6) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock, and has elected under the provisions of section 1372(a) of the Internal Revenue Code of 1954, as amended through December 31, 1979 to be taxed as a small business corporation under the provisions of said Internal Revenue Code of 1954, as amended through December 31, 1979.

Subd. 2. **Electing small business corporation.** For purposes of this chapter, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under section 290.972, subdivision 1, which, under section 290.972, is in effect for such taxable year.

Subd. 3. **Stock owned by husband and wife.** For purposes of subdivision 1(1) a husband and wife (and their estates) shall be treated as one shareholder.

Subd. 4. **Ownership of certain stock.** For purposes of subdivision 1, a corporation shall not be considered a member of an affiliated group at any time during any taxable year by reason of the ownership of stock in another corporation if such other corporation

(1) has not begun business at any time on or after the date of its incorporation and before the close of such taxable year, and

(2) does not have taxable income for the period included within such taxable year.

Subd. 5. [Repealed, 1980 c 607 art 1 s 33]

Subd. 6. **Certain trusts permitted as shareholders.** For purposes of subdivision 1, the following trusts may be shareholders:

(1) (a) A trust all of which is treated as owned by the grantor (who is an individual who is a citizen or resident of the United States) under sections 671 to 679 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

(b) A trust which was described in subparagraph (a) immediately before the death of the grantor and which continues in existence after such death, but only for the 60-day period beginning on the day of the grantor's death. If a trust is described in the preceding sentence and if the entire corpus of the trust is includable in the gross estate of the grantor, the preceding sentence shall be applied by substituting "2-year period" for "60-day period."

(2) A trust created primarily to exercise the voting power of stock transferred to it.

(3) Any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60 day period beginning on the day on which the stock is transferred to it.

In the case of a trust described in paragraph (1), the grantor shall be treated as the shareholder.

In the case of a trust described in paragraph (2), each beneficiary of the trust shall, for the purposes of subdivision 1, paragraph (1), be treated as a shareholder.

History: *1961 c 457 s 1; 1963 c 355 s 19; 1965 c 394 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 8-10; 1980 c 607 art 1 s 26-28*

290.972 ELECTION BY SMALL BUSINESS CORPORATION.

Subdivision 1. **Eligibility.** Except as provided in subdivision 6 any small business corporation and its shareholders may, in accordance with the provisions of this section, elect to have the corporation and its shareholders taxed as though the corporation were a partnership. The election shall be valid only if all persons who are shareholders in the corporation on the day on which the election is made consent to the election.

Subd. 2. **Effect.** If a small business corporation makes an election under subdivision 1, then

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect and, the provisions of section 290.973 shall apply to such shareholder.

Subd. 3. **Where and how made.** (1) **In general.** An election under subdivision 1 may be made by a small business corporation for any taxable year at any time during the preceding taxable year, or at any time during the first 75 days of the taxable year. The election shall be made in a manner as the commissioner shall prescribe by rule.

(2) **Treatment of certain late elections.** If

(a) a small business corporation makes an election under subdivision 1 for any taxable year, and

(b) such election is made after the first 75 days of the taxable year and on or before the last day of such taxable year,

then such election shall be treated as made for the following taxable year.

(3) In case of sickness, absence, or other disability, or when in the judgment of the commissioner good cause exists, he may upon application extend the time for making the election under subdivision 1 for not more than twelve months following the close of the taxable year for which the election is sought.

Subd. 4. **Years for which effective.** An election under subdivision 1 shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subdivision 5.

Subd. 5. **Termination.** (1) **New shareholders.** (A) An election under subdivision 1 made by a small business corporation shall terminate if any person who was not a shareholder in the corporation on the day on which the election is made, becomes a shareholder in the corporation and affirmatively refuses to

consent to the election on or before the 60th day after the day on which he acquires the stock.

(B) If the person acquiring the stock is the estate of a decedent, the period under subparagraph (A) for affirmatively refusing to consent to the election shall expire on the 60th day after whichever of the following is the earlier:

(i) The day on which the executor or administrator of the estate qualifies; or

(ii) The last day of the taxable year of the corporation in which the decedent died.

(C) Any termination of an election under subparagraph (A) by reason of the affirmative refusal of any person to consent to the election shall be effective for the taxable year of the corporation in which the person becomes a shareholder in the corporation or, if later, the first taxable year for which the election would otherwise have been effective, and for all succeeding taxable years of the corporation.

(2) **Revocation.** An election under subdivision 1 made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective

(A) for the taxable year in which made, if made before the close of the first month of the taxable year,

(B) for the taxable year following the taxable year in which made, if made after the close of the first month,

and for all succeeding taxable years of the corporation. The revocation shall be made in a manner as the commissioner shall prescribe by rule.

(3) **Ceases to be small business corporation.** An election under subdivision 1 made by a small business corporation shall terminate if at any time

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day,

the corporation ceases to be a small business corporation (as defined in section 290.971, subdivision 1). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(4) **Foreign income.** An election under subdivision 1 made by a small business corporation shall terminate if for any taxable year of the corporation for which the election is in effect, such corporation derives more than 80 percent of its gross receipts from sources outside the United States. Such termination shall be effective for the taxable year of the corporation in which it derives more than 80 percent of its gross receipts from sources outside the United States, and for all succeeding taxable years of the corporation.

(5) **Passive investment income.** (A) Except as provided in subparagraph (B), an election under subdivision 1 made by a small business corporation shall terminate if, for any taxable year of the corporation for which the election is in effect, such corporation has gross receipts more than 20 percent of which is passive investment income. Such termination shall be effective for the taxable year of the corporation in which it has gross receipts of such amount, and for all succeeding taxable years of the corporation.

(B) Subparagraph (A) shall not apply with respect to a taxable year in which a small business corporation has gross receipts more than 20 percent of which is passive investment income, if

(i) such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business or the next succeeding taxable year; and

(ii) the amount of passive investment income for such taxable year is less than $3,000.

(C) For purposes of this paragraph, the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account for purposes of this paragraph only to the extent of gains therefrom). Gross receipts derived from sales or exchanges of stock or securities for purposes of this paragraph shall not include amounts received by an electing small business corporation which are treated under section 331 of the Internal Revenue Code of 1954, as amended through December 31, 1979 (relating to corporate liquidations), as payments in exchange for stock where the electing small business corporation owned more than 50 percent of each class of the stock of the liquidating corporation.

Subd. 6. **Election after termination.** If a small business corporation has made an election under subdivision 1 and if such election has been terminated or revoked under subdivision 5, such corporation (and any successor corporation) shall not be eligible to make an election under subdivision 1 for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the commissioner consents to such election.

Subd. 7. [Repealed, 1980 c 419 s 46]

History: *1961 c 457 s 2; 1963 c 355 s 20; 1965 c 394 s 2; 1971 c 566 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 25,29; 1977 c 376 s 11,13; 1980 c 419 s 41,42; 1980 c 607 art 1 s 29-31*

290.973 CORPORATION TAXABLE INCOME TAXED TO SHAREHOLDERS.

Subdivision 1. **General rule.** The taxable income of an electing small business corporation for any taxable year shall be included in the gross income of the shareholders of such corporation in the manner and to the extent set forth in this section.

Subd. 2. **Taxable income defined.** For purposes of this section the term "taxable income" means the taxable net income of the small business corporation computed as though said corporation were a partnership and in accordance with the provisions of section 290.31, subdivision 3; however, such computation shall not result in the exclusion of any class of income which would be taxable to the corporation under the provisions of this chapter.

Subd. 3. **Amount included in gross income.** Each person who is a shareholder of an electing small business corporation on the last day of a taxable year of such corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, his pro rata share of the corporation's taxable income for the corporation's taxable year in accordance with the provisions of section 290.31, subdivision 2.

Subd. 4. **Treatment of family groups.** Any amount taxable to a shareholder from an electing small business corporation under subdivision 3, may be apportioned or allocated by the commissioner between or among shareholders of such corporation who are members of such shareholder's family (as defined in section 290.10, clause (6)) if he determines that such apportionment or allocation is necessary in order to reflect the value of services rendered to the corporation by such shareholders.

History: *1961 c 457 s 3*

290.974 RETURN OF ELECTING SMALL BUSINESS CORPORATION.

Every electing small business corporation (as defined in section 290.971, subdivision 1) shall make a partnership return for each taxable year during which said election is in effect stating specifically the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, and such other information for the purposes of carrying out the provisions of sections 290.971 to 290.975 as the commissioner may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of sections 290.49 and 290.50 (relating to limitations), be treated as a return filed by a partnership under section 290.41.

History: *1961 c 457 s 4*

290.975 CLASSIFICATION OF INCOME.

The income taxable under the Internal Revenue Code of 1954, as amended through December 31, 1979 to an individual because of his stock ownership in an electing Subchapter S Corporation, shall be considered income of said individual, within the measure of the tax imposed by chapter 290, if for said taxable year during which said corporation is an electing Subchapter S Corporation, an election has also been made under sections 290.971 to 290.975 for the taxation of said corporation as though it were a partnership.

History: *1961 c 457 s 5; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32*

290.981 [Repealed, 1977 c 423 art 2 s 20]
290.982 [Repealed, 1977 c 423 art 2 s 20]
290.983 [Repealed, 1977 c 423 art 2 s 20]
290.984 [Repealed, 1977 c 423 art 2 s 20]
290.985 [Repealed, 1977 c 423 art 2 s 20]
290.986 [Repealed, 1977 c 423 art 2 s 20]
290.987 [Repealed, 1977 c 423 art 2 s 20]
290.988 [Repealed, 1977 c 423 art 2 s 20]
290.989 [Repealed, 1977 c 423 art 2 s 20]
290.99 [Repealed, 1977 c 423 art 2 s 20]
290.991 [Repealed, 1977 c 423 art 2 s 20]
290.992 [Repealed, 1977 c 423 art 2 s 20]