

CHAPTER 290

INCOME AND EXCISE TAXES

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290.01 DEFINITIONS.

[For text of subs 1 to 2, see M.S.1980]

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 chapter, a trust or estate or a corporation; and the term "partner" includes a member in a syndicate, group, pool, joint venture or organization.

[For text of subs 4 to 18, see M.S.1980]

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 (and for individuals, section 290.21) to the extent allowed by section 290.18, subdivision 1.

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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, 1980.

The term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income 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 subdivision. For estates and trusts the adjusted gross income shall be their federal taxable income 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 subdivision and with the modification that the federal deduction for personal exemptions for trusts and estates shall not be allowed.

(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, sections 131, 133, 134, 141, 152, 156, 157, 405, and 543 of P.L. 95-600, and section 2 of P.L. 96-608 (relating to pensions, individual retirement accounts, deferred compensation plans, the sale of a residence and to conservation payments to farmers) including the amendments made to these sections in P.L. 96-222 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.

(iv) The Internal Revenue Code of 1954, as amended through December 31, 1980, shall be in effect for taxable years beginning after December 31, 1980 including 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. The provisions of P.L. 96-471 (relating to installment sales) shall be effective at the same time that they become effective for federal income tax purposes.

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:

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(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) A business casualty loss if the taxpayer elected to deduct the loss on the current year's federal income tax return but had deducted the loss on the previous year's Minnesota income tax return;

(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 amount of the federal income tax overpayment shall be reported only to the extent that the amount resulted in a reduction of the tax imposed by this chapter.

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, combined, or separate Minnesota income tax returns. In the case of combined or 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 combined or 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) 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);

(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;

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(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;

(19) The amount of a distribution from an individual housing account which is to be included in gross income as required under section 290.08, subdivision 25;

(20) To the extent deducted in computing the taxpayer's federal adjusted gross income, interest, taxes and other expenses which are not allowed under section 290.10, clause (9) or (10); and

(21) To the extent excluded from federal adjusted gross income, in the case of a city manager or city administrator who elects to be excluded from the public employees retirement association and who makes contributions to a deferred compensation program pursuant to section 353.028, the amount of contributions made by the city manager or administrator which is equal to the amount which would have been the city manager's or administrator's employee contribution pursuant to section 353.27, subdivision 2, if he were a member of the public employees retirement association.

(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.

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(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 or out of state loss carryforwards resulting from the losses, and including any farm loss carryforwards or carrybacks;

(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) 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, 1986 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

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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;

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

(19) A business casualty loss which the taxpayer elected to deduct on the current year's Minnesota income tax return but did not deduct on the current year's federal income tax return; and

(20) Income from the performance of personal or professional services which is subject to the reciprocity exclusion contained in section 290.081, clause (a);

(21) To the extent included in federal adjusted gross income, in the case of a city manager or city administrator who elects to be excluded from the public employees retirement association and who makes contributions to a deferred compensation program pursuant to section 353.028, the amount of payments from the deferred compensation program equivalent to the amount of contributions taxed under clause (a)(21); and

(22) Contributions to and interest earned on an individual housing account as provided by section 290.08, subdivision 25.

(c) A modification affecting shareholders of electing small business corporations under section 1372 of the Internal Revenue Code of 1954 shall be made.

In cases where the election under section 1372 of the Internal Revenue Code of 1954 antedates the election under this chapter and at the close of the taxable year immediately preceding the effective election under this chapter 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 chapter.

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(d) 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 chapter and 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 chapter.

(e) 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 (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or any person 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.** 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 one year.

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. For corporations, taxable net income is then reduced by the deductions contained in section 290.21.

Subd. 23. **Adjusted gross income.** The term "adjusted gross income" means the gross income, as defined in subdivision 20, less the federal income tax deduction allowed by section 290.18, subdivision 2.

*[For text of subd 24, see M.S.1980]*

Subd. 25. **Employee stock ownership trust.** The term "employee stock ownership trust" means a trust which is a qualified stock bonus trust under sections 401(a) and 409A or 4975 of the Internal Revenue Code of 1954, as amended through December 31, 1979.

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) and 401(e) of the Internal Revenue Code of 1954 as amended through December 31, 1980 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,

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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 the last sentence, 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, 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 the last sentence, 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 the last sentence,

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. 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:** 1981 c 49 s 1; 1981 c 60 s 1; 1981 c 178 s 1-9; 1981 c 254 s 2; 1981 c 261 s 20; 1981 c 344 s 1; 1Sp1981 c 1 art 9 s 5

## 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, an alternative tax shall be granted to these individuals.

**History:** 1981 c 178 s 10

**290.032 LUMP SUM DISTRIBUTION TAX.**

*[For text of subd 1, see M.S.1980]*

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 3f, 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.

*[For text of subd 3, see M.S.1980]*

Subd. 4. [Repealed, 1981 c 343 s 42]

*[For text of subd 5, see M.S.1980]*

**History:** 1981 c 178 s 11

**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) 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 section 298.01; 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;

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

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

(d) Cooperative or mutual rural telephone associations; and cooperative associations organized under the provisions of chapter 308, 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;

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(e) 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.

Subd. 2. Except as provided in subdivisions 1 and 3, organizations are exempted from taxation under this chapter if they are exempt from income taxation pursuant to Subchapter F of the Internal Revenue Code.

Subd. 3. (a) An organization exempt from taxation under subdivision 2 shall, nevertheless, be subject to tax under this chapter to the extent provided in the following provisions of the Internal Revenue Code:

(i) Section 527 (dealing with political organizations) and (ii) section 528 (dealing with certain homeowners associations) but

notwithstanding this subdivision, shall be considered an organization exempt from income tax for the purposes of any law which refers to organizations exempt from income taxes.

(b) The tax shall be imposed on the taxable income of political organizations or homeowner associations. The tax shall be at the corporate rates. The tax shall only be imposed on income and deductions assignable to this state under sections 290.17 to 290.20. Except for section 290.09, subdivision 29, to the extent deducted in computing federal taxable income, the deductions contained in sections 290.09 and 290.21 shall not be allowed in computing Minnesota taxable net income.

Subd. 4. (a) Corporations, individuals, estates, trusts or organizations claiming exemption under the provisions of subdivision 1, clause (c), or subdivision 2 shall furnish information as to their exempt status under the Internal Revenue Code.

(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 ten 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 wilfully fails to file such return shall be guilty of a misdemeanor.

(c) In the event that the Internal Revenue Service revokes, cancels or suspends, in whole or part, the exempt status of any corporation, individual, estate, trust or organization referred to in clause (a), or if the amount of gross income, deductions, credits, items of tax preference or taxable income is changed or corrected by either the taxpayer or the Internal Revenue Service, or if the taxpayer consents to any extension of time for assessment of federal income taxes such corporation, individual, estate, trust or organization shall notify the commissioner in writing of such action within 90 days thereafter.

(d) The periods of limitations contained in section 290.56 shall apply whenever there has been any action referred to in clause (c), notwithstanding any period of limitations to the contrary.

Subd. 5. In the case of any failure to furnish annual report information at the time and in the manner prescribed by subdivision 4, clause (b), unless it is shown that such failure is due to reasonable cause, there shall be paid to the commissioner by the exempt organization a penalty of \$100 for each such failure. The penalty shall be immediately due and payable upon notice and demand by the commissioner and may be collected in the same manner as any delinquent income tax.

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Subd. 6. The Internal Revenue Code referred to in any of the subdivisions of this section means the Internal Revenue Code of 1954, as amended through December 31, 1980.

Subd. 7. Notwithstanding section 290.61, any information required to be furnished to the commissioner of revenue pursuant to subdivisions 1 and 4 shall be open to public inspection at such times and in such places as the commissioner may prescribe. The commissioner is also authorized to publish a list of organizations exempt from taxation pursuant to this section. Nothing in this subdivision shall authorize the commissioner to disclose the name or address of any contributor to any organization which is or was so exempt, or which has applied for tax exempt status, or any other information which could not be disclosed under section 6104 of the Internal Revenue Code.

**History:** 1981 c 343 s 2; 1Sp1981 c 4 art 1 s 133

## 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 deductions allowed under section 290.21 the rate of 12 percent.

Subd. 2c. **Schedule of rates for individuals, estates and trusts.** (a) 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 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 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, 1980, the taxable net income brackets in subdivision 2c shall be adjusted for inflation. For the purpose of making the adjustment as provided in this subdivision all of the brackets provided in subdivision 2c shall be the adjusted brackets as they existed for taxable years beginning after December 31,

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1979 and before January 1, 1981. The commissioner shall determine: (a) the percentage increase 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. He shall then determine the percent change 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 (b) the percentage increase in average Minnesota gross income from tax year 1980 to, in 1981, tax year 1981, and in each subsequent tax year between the previous tax year and the current tax year. The percent increases in Minnesota gross income shall be estimated using the best available data sources and reasonable forecasting procedures. The determination of the commissioner pursuant to this section shall not be considered a "rule" and shall not be subject to the administrative procedures act contained in chapter 15.

The dollar amount in each taxable net income bracket for the prior year in subdivision 2c shall be multiplied by a figure calculated as one plus 100 percent of the consumer price index increase or 100 percent of the Minnesota gross income increase, whichever is smaller. The product of the calculation shall yield the inflation adjusted tax brackets for each succeeding year. If the product exceeds a whole dollar amount, it shall be rounded to the nearest whole dollar.

No later than October 1 of each year, the commissioner shall announce both percentage increases and the specific percentage that will be used to adjust the tax brackets, the maximum standard deduction amount, and the personal credit amounts.

*[For text of subd 3c, see M.S.1980]*

**Subd. 3d. Low income alternative tax.** A claimant as defined in section 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 for the entire calendar year of the claimant and his spouse, if any, including income not assignable to this state, 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.

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The commissioner of revenue shall provide alternative tax tables.

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, plus the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1980, 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.** Subject to the provisions of subdivision 3g 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, \$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, 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.

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(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, 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 this chapter is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by sections 69.54 to 69.56.

(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 dollar amount of each credit for the prior year in subdivision 3f shall be increased in the same manner as provided in subdivision 2d for the expansion of the taxable net income brackets.

*[For text of subds 9 to 10, see M.S.1980]*

**Subd. 11. Contributions to political parties and candidates.** In lieu of the deduction 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 or filing a combined return, 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

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section 10A.32, subdivision 3b. For purposes of this subdivision, a political party means a major political party as defined in section 200.02, subdivision 7.

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

*[For text of subd 13, see M.S.1980]*

**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, 1980, and any regulations promulgated pursuant thereto, provided that, after December 31, 1980, any solar collector included in the claimed expenditure is certified by the commissioner of energy, planning and development. 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.

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A passive system may include either or both:

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

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 adopted by the commissioner of revenue in cooperation with the commissioner of energy, planning and development. 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, 1980. "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) and (10), (d) (1) to (3), and (e), of the Internal Revenue Code of 1954, as amended through December 31, 1980, and any regulations promulgated pursuant thereto.

The commissioner of revenue in cooperation with the commissioner of energy, planning and development shall adopt rules establishing additional qualifications and definitions for the credits provided in this subdivision.

Notwithstanding section 290.61, the commissioner of revenue may request the commissioner of energy, planning and development 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 department of energy, planning and development who receive information furnished by a taxpayer for purposes of claiming this credit.

The commissioner of energy, planning and development shall adopt 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 commissioner of energy, planning and development may adopt 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:** 1981 c 29 art 7 s 30; 1981 c 60 s 2; 1981 c 178 s 12-16; 1981 c 343 s 3; 1981 c 356 s 192; 1Sp1981 c 1 art 1 s 1,2

#### 290.067 DEPENDENT CARE CREDIT.

*[For text of subd 1, see M.S.1980]*

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, plus the ordinary income portion of any lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1980, 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.

*[For text of subds 3 to 5, see M.S.1980]*

**History:** 1981 c 343 s 4; 1Sp1981 c 2 s 22

#### 290.07 NET INCOME; COMPUTATION, ACCOUNTING PERIOD.

*[For text of subds 1 and 2, see M.S.1980]*

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

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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 reference 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.

*[For text of subd 4, see M.S.1980]*

Subd. 5. **Property sold on installment plan.** Income from installment sales shall be determined in accordance with the provisions of sections 453, 453A, and 453B of the Internal Revenue Code of 1954, as amended through December 31, 1980.

*[For text of subs 5a to 7, see M.S.1980]*

**History:** 1981 c 60 s 3; 1981 c 178 s 17

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

*[For text of subd 1, see M.S.1980]*

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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.

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 one year 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.

*[For text of subs 4 to 6, see M.S.1980]*

**History:** 1981 c 178 s 18,19

**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. 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:** 1981 c 178 s 20

**290.076** [Repealed, 1981 c 178 s 119]

**290.077 INCOME IN RESPECT OF DECEDENTS.**

Subdivision 1. **Inclusion in gross income.** Income shall be included in gross income as provided in section 691(a) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

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 691(a) (1), (A) (B) or (C) of the Internal Revenue Code of 1954, as amended through December 31, 1980 who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

*[For text of subd 3, see M.S.1980]*

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**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 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

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(A) (i) The term "inheritance tax" means the tax imposed by Minnesota 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 by Minnesota on the estates of decedents dying on or after January 1, 1980, reduced by the credits against the tax; (iii) The terms "inheritance tax" or "estate tax" also include the tax imposed by other states on the estates of decedents 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.

(5) **Lump sum distribution adjustment.** For purposes of section 290.032 (other than the minimum distribution allowance), the total taxable amount of any lump sum distribution shall be reduced by the amount of the deduction allowable under paragraph (1) of this subdivision which is attributable to the total taxable amount (determined without regard to this paragraph).

**History:** 1981 c 60 s 4; 1981 c 178 s 21,22

## 290.079 INTEREST ON CERTAIN DEFERRED PAYMENTS.

*[For text of subs 1 to 5, see M.S.1980]*

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.

**History:** 1981 c 178 s 23

## 290.08 EXEMPTIONS FROM GROSS INCOME.

*[For text of subs 1 to 3, see M.S.1980]*

Subd. 7. [Repealed, 1981 c 60 s 28; 1981 c 178 s 119]

Subd. 8. **Interest from United States or state of Minnesota.** Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; and interest upon obligations of the state of Minnesota, any of its political or governmental

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subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities. This subdivision shall not apply to corporations taxable under sections 290.02 or 290.361 or to individuals, estates, or trusts.

*[For text of subd 12, see M.S.1980]*

Subd. 13: [Repealed, 1981 c 60 s 28; 1981 c 178 s 119]

*[For text of subds 14 and 19, see M.S.1980]*

Subd. 20. **Income from discharge of indebtedness.** The exclusion of income from discharge of indebtedness and the determination of the basis of any property shall be determined in accordance with the provisions of sections 108 and 1017 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

*[For text of subds 21 and 23, see M.S.1980]*

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, 1986 that is guaranteed by the commissioner of agriculture as provided in sections 41.51 to 41.60.

Subd. 25. **Individual housing accounts.** (a) (1) Gross income shall not include the amount, up to a maximum of \$1,500, paid in cash during the taxable year by an individual taxpayer to an individual housing account established for his benefit 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 total amount excludible from gross income for contributions to an individual housing account during the taxable year may not exceed \$1,500. This total exclusion for a married couple may be taken by either spouse or divided between them as they elect. The amount of interest paid on any amount contributed in excess of \$1,500 during a taxable year or in excess of the maximum contribution permitted by paragraph (2) during all taxable years shall not be excluded from gross income.

(2) The amounts excludible from gross income for contributions to an individual housing account by 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 contributions excluded from gross income pursuant to this subdivision for all taxable years by his spouse. In the case of a married couple, each of whom had established an individual housing account prior to the marriage, the combined limit on the amount excludible from gross income for all taxable years shall be the greater of \$10,000 or the amounts excluded from gross income for contributions to their accounts for taxable years ending before the day on which they were married.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "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:

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

(ii) 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.

(iii) The assets of the trust shall be invested only in savings or time deposits in amounts fully insured as prescribed in paragraph (ii). 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.

(iv) 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.

(v) Except as provided in 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 a qualified purchase and provides that the instrument of payment is payable to the seller or his designee, 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).

Except as provided in clause (c), a trustee who fails to pay to or deposit with the commissioner any sum or sums required by this subdivision to be deducted, withheld and paid, shall be personally and individually liable to the state of Minnesota for such sum or sums. Failure to comply with the requirements of paragraph (v) shall be subject to the penalties and interest applicable to withholding tax violations under section 290.92, subdivision 15.

If the trustee, in violation of the provisions of this subdivision, fails to deduct and withhold the amounts required by this subdivision and thereafter the taxes against which any amount withheld may be credited are paid, the amounts required to be deducted and withheld shall not be collected from the trustee. Payment of the tax due under clauses (c)(1) and (d) shall not relieve the trustee from liability for any penalties and interest otherwise applicable in respect of its failure to deduct and withhold.

(2) "Residence" means all or part of a house, townhouse, condominium or cooperative apartment used as the taxpayer's principal and permanent place of residence, but does not include a mobile home as defined in section 273.13, subdivision 3.

(3) "Qualified purchase" means the purchase by a participant in an individual housing account of a principal residence, if (i) the participant has not had a present ownership interest in a principal residence; (ii) the residence to be purchased is located in Minnesota; and (iii) the purchase is made more than one year after the individual housing account was established. For purposes of this paragraph, "participant" means in the case of a married couple either spouse at the time of the purchase.

(c) (1) Any amount paid or distributed out of an individual housing account shall be included in gross income by the participant in the account for the taxable year in which the distribution is received, unless the amount is used exclusively in connection with a qualified purchase.

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(2) Paragraph (1) shall not apply to a distribution out of an individual housing account to the extent that it was not excluded from gross income either as individual housing account contributions or interest.

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.

(3) Payment out of an individual housing account pursuant to a good faith, written earnest money contract shall be treated as a qualified purchase for purposes of paragraph (1), either if the sale is completed or if the sale is not completed and the earnest money is forfeited. If an individual housing account distribution is paid pursuant to a good faith, written earnest money contract and is forfeited to the seller for failure to complete the sale, the taxpayer may elect to make and exclude from gross income additional contributions to the individual housing account equal to the amount of the distribution, subject to the annual limits applicable to the amounts excludible from gross income but notwithstanding the \$10,000 limit provided by clause (a). If an individual housing account distribution is paid pursuant to an earnest money contract, the sale is not completed, and the distribution is not forfeited to the seller, the amount of the distribution shall be repaid to the account.

(4) In the case of a married couple, any distribution includible in gross income pursuant to this clause shall be allocated equally to each spouse's income.

(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 a qualified purchase, 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 includible in his gross income for the taxable year. The ten percent tax provided by this clause shall be in addition to the taxpayer's tax liability if calculated under section 290.06, subdivision 3d, and shall not be reduced by any credit pursuant to section 290.06, subdivisions 3e, 3f, 9, 9a, 11 or 14 or any other nonrefundable credit. 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. The ten percent tax provided by this clause shall not be imposed, if (1) the participant is unable to make a qualified purchase because he marries a person who has or had an ownership interest in a residence; and (2) no contributions or interest are excluded from gross income in a taxable year ending after the date of the marriage.

(e) No allocation of federal income tax paid on amounts excluded from gross income pursuant to this subdivision shall be required for purposes of the deduction of federal income tax paid under section 290.18, subdivision 2.

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(f) 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.

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

**History:** 1981 c 60 s 5,6; 1981 c 178 s 24; 1981 c 261 s 21; 1Sp1981 c 1 art 9 s 6

## 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, any income, or if it is a corporation, estate, or trust, 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.

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(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 chairman. 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:** 1981 c 178 s 25

## **290.085 GROSS INCOME, DIVIDENDS FROM STATE AND NATIONAL BANKS.**

Every taxpayer taxable under this chapter must include in gross income dividends received from national banks 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:** 1981 c 178 s 26

**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.

Property taxes may not be deducted under this section if

(1) The taxes are attributable to a trade or business carried on by an individual, or

(2) The taxes are expenses for the production of income which are paid or incurred by an individual; and which are not allowed as a deduction under section 164 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

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 amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) 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, even though the candidate's expenditures are limited under other state or federal laws;

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

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

(f) 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.

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(g) 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 sections 290.01, subdivision 20 or 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 described in section 264(a)(2) and (3), (b) and (c) (relating to life insurance) of the Internal Revenue Code of 1954, as amended through December 31, 1980 shall not be allowed as a deduction.

(c) If personal property or educational services are purchased under a contract the provisions of section 163(b) of the Internal Revenue Code of 1954, as amended through December 31, 1980 shall apply.

(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.

(e) In the case of a taxpayer other than a corporation, the amount of interest on investment indebtedness allowable as a deduction shall be allowed and limited as set forth in section 163(d) of the Internal Revenue Code of 1954, as amended through December 31, 1980. The limitation prescribed in section 163(d)(1)(A) for married individuals who file separate returns shall also apply to married individuals who file separately on one return.

(f) A taxpayer may not deduct interest on indebtedness incurred or continued to purchase or carry obligations or shares, or to make deposits or other investments, the interest on which is described in section 116(c) of the Internal Revenue Code of 1954, as amended through December 31, 1980 to the extent such interest is excludable from gross income under section 116 of the Internal Revenue Code of 1954 as amended through December 31, 1980.

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 (including the windfall profit tax on domestic crude oil), by corporations, national and state banks; (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, 1980. 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

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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. 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 290.12, 290.131 to 290.139, 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 80 percent of each class of its stock is owned directly by the taxpayer, and

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(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 the provisions of the Federal Disaster Relief Act of 1974, at the election of the taxpayer, may be deducted 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 290.12, 290.131 to 290.139, 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 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 one year.

(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.

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(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 June 30, 1959, 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 (b) (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 290.131 to 290.139, 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

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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 component member of a controlled group from another component member of the same controlled 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.

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

(A) all component members of a controlled group shall be treated as one taxpayer, and

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

(7) For purposes of paragraphs (2) and (6), the term "controlled group" has the meaning assigned to it by section 1563(a) 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 1563(a)(1) of the Internal Revenue Code of 1954, as amended through December 31, 1979.

*[For text of subds 8 and 9, see M.S.1980]*

Subd. 10. **Medical expenses.** Payments (not compensated for by insurance or otherwise) for medical, dental, and other expenses as provided and as limited by section 213 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

Subd. 12. [Repealed, 1981 c 60 s 28]

*[For text of subd 13, see M.S.1980]*

Subd. 15. **Standard deduction.** In lieu of all deductions provided for in this chapter except for the federal income tax deduction 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 of a husband and wife, 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.

(b) For each taxable year beginning after December 31, 1980, the maximum amount of the standard deduction shall be adjusted for inflation in the same manner as provided in section 290.06, subdivision 2d, for the expansion of the taxable net income brackets. If the product exceeds a whole dollar amount, it shall be rounded to the nearest dollar.

(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.

*[For text of subds 16 and 17, see M.S.1980]*

Subd. 17a. **Stock acquired by original seller in cooperative apartment corporation.** (a) If the original seller acquires any stock of a cooperative apartment corporation from the corporation or by foreclosure, 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 the acquisition of the stock.

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(b) Except in the case of an acquisition of stock of a corporation by foreclosure, clause (a) shall apply only if the acquisition of stock occurs not later than one year after the date on which the apartments (or leaseholds therein) are transferred by the original seller to the corporation. For purposes of this clause and clause (a), the term "by foreclosure" means by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest in the stock held by the original seller.

(c) Clause (a) 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.

(d) 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 in the same manner as provided in section 174 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**Subd. 19. Organizational expenditures.** The organizational and start up expenditures of a corporation may, at the election of the corporation be deducted in accordance with the provisions of sections 248 and 195 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**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 shall be treated in the same manner as provided in section 175 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

*[For text of subds 22 to 28, see M.S.1980]*

**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. For this purpose and for the purpose of

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applying the limitation in the following paragraph regarding the application of any carryback or carryforward, the term gross income shall include the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1980. 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 any individual, estate or trust which elects a net operating loss carryforward under section 172(b)(3)(C) of the Internal Revenue Code of 1954, as amended through December 31, 1980, 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.

(g) **Order of application.** The application of this subdivision shall be made after applying any limitation to out of state losses contained in section 290.17.

Subd. 30. [Repealed, 1Sp1981 c 1 art 9 s 8]

**History:** 1981 c 60 s 7-10; 1981 c 178 s 27-37; 1981 c 343 s 5; 1Sp1981 c 1 art 1 s 3; 1Sp1981 c 2 s 23; 1Sp1981 c 3 s 13

## 290.091 MINIMUM TAX ON PREFERENCE ITEMS.

In addition to all other taxes imposed by this chapter there is hereby imposed, a tax which, in the case of a resident individual, 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, 1980 except that for purposes of the tax imposed by this section, 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, 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 to 290.20, and the denominator of which is the taxpayer's total preference item income for federal purposes.

**History:** 1981 c 60 s 11

### **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 7, 9 and 11 hereof.

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. The deductions provided in section 290.21 cannot be used in the determination of a net operating loss.

(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.

*[For text of subs 3 to 8, see M.S.1980]*

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". During this extended period, married individuals who elected to file separate returns or a combined return may change their election and file a joint return.

*[For text of subd 10, see M.S.1980]*

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Subd. 11. **Carryback or carryover adjustments.** (a) For individuals the amount of a net operating loss that may be carried back or carried over shall be the same dollar amount allowable in the determination of federal adjusted gross income. For estates and trusts the amount of a net operating loss that may be carried back or carried over shall be the same dollar amount allowable in the determination of federal taxable income.

(b) The following adjustments to the amount of the net operating loss that may be carried back or carried over must be made for:

(1) Nonassignable income or losses as required by section 290.17, subdivision 2.

(2) Losses which constitute tax preference items as required in section 290.17, subdivision 1.

(3) Modifications required because of the restrictions on farm losses as provided in section 290.09, subdivision 29.

(4) Adjustments to the determination of federal adjusted gross income that must be made because of changes in the Internal Revenue Code that have not yet been adopted by the legislature by updating the reference to the Internal Revenue Code contained in section 290.01, subdivision 20.

(5) Modifications to income and loss contained in federal adjusted gross income according to the provisions of section 290.01, subdivision 20, clause (c).

(6) Gains or losses which result from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes subject to the limitations contained in section 290.01, subdivision 20, clause (b) (2) and (4).

(7) Interest, taxes, and other expenses not allowed under section 290.10, clauses (9) and (10) or section 290.101.

(c) (1) The net operating loss carryback or carryover applied as a deduction in the taxable year to which the net operating loss is carried back or carried over shall be equal to the net operating loss carryback or carryover applied in the taxable year in arriving at federal adjusted gross income (or federal taxable income for trusts and estates) subject to the modifications contained in clause (b) and to the following modifications:

(A) Increase the amount of carryback or carryover applied in the taxable year by the amount of losses and interest, taxes and other expenses not assignable or allowable to Minnesota incurred in the taxable year.

(B) Decrease the amount of carryback or carryover applied in the taxable year by the amount of income not assignable to Minnesota earned in the taxable year and the amount of federal jobs credit or WIN credit earned in the taxable year.

(C) A taxpayer who is not a resident of Minnesota during any part of the taxable year and who has no income assignable to Minnesota during the taxable year shall apply no net operating loss carryback or carryover in the taxable year.

(2) The provisions of section 172(b) of the Internal Revenue Code of 1954 as amended through December 31, 1980 (relating to carrybacks and carryovers) shall apply. The net operating loss carryback or carryover to the next consecutive taxable year shall be the net operating loss carryback or carryover as calculated in clause (c) (1) less the amount applied in the earlier taxable year(s). No additional net operating loss carryback or carryover shall be allowed if the entire amount has been used to offset Minnesota income in a year earlier than was possible on the federal return. A net operating loss carryback or carryover that was allowed to

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offset federal income in a year earlier than was possible on the Minnesota return shall still be allowed to offset Minnesota income but only if the loss was assignable to Minnesota in the year the loss occurred.

(d) A net operating loss shall be allowed to be carried back or carried forward only to the extent that loss was assignable to Minnesota in the year the loss occurred or in the year to which the loss was carried over, whichever would allow more of the loss to be allowed for Minnesota purposes.

(e) If a taxpayer has a net operating loss for federal purposes and the provisions of the farm loss limitation as provided in section 290.09, subdivision 29 apply, the limitations applying to the farm losses that are carried back or carried over are applied first and the net operating loss that is carried back or carried over is limited to the excess, if any, that the net operating loss exceeds the farm loss limitation.

*History: 1981 c 178 s 38; 1981 c 343 s 6-8*

## 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 liquidation, 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

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(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) (a) Contributions by employees under the federal railroad retirement act and the federal social security act. (b) Payments to Minnesota or federal public employee retirement funds. (c) Three-fourths (75 percent) of 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.

(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 chapter.

(10) In situations where this chapter provides for a subtraction 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 liability assessed upon such income subtracted, 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:** 1981 c 178 s 39; 1Sp1981 c 3 s 3

## 290.101 DENIAL OF DEDUCTIONS RELATING TO SUBSTANDARD BUILDINGS.

*[For text of subsds 1 to 8, see M.S.1980]*

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 this section and the average time of such noncompliance; (c) the number and types of buildings brought into a condition of compliance under this section; (d) a description of the types of violations found to endanger the health and safety of occupants under this section; 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:** 1981 c 178 s 40

## 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 290.131 to 290.139, 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. The basis shall be diminished by the amount of the deductions

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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 chapter, 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, clause (11),
- 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.

*[For text of subd 3, see M.S.1980]*

**Subd. 4. Gifts.** The disposition of property by gift shall be treated as dispositions from which neither gain nor loss arises for the purposes of this chapter.

**History:** 1981 c 178 s 41-43

## **290.13 GAIN OR LOSS ON DISPOSITION OF PROPERTY, RECOGNITION.**

*[For text of subds 1 to 4, see M.S.1980]*

**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 or into property not similar or related in service or use to the converted property, 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

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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 paragraph (2), 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) two years 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.

If the property was acquired, after January 1, 1933, as the result of a compulsory or involuntary conversion described in paragraphs (1) or (2) of Minnesota Statutes 1980, 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 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 (2) 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.

(3) For purposes of this subdivision the terms control and disposition of the converted property shall have the same meaning as is contained in section 1033(a)(2)(E) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

(4) Property which qualifies to be treated as an involuntary conversion under section 1033(c) to (g) of the Internal Revenue Code of 1954, as amended through December 31, 1980 shall also be treated as qualifying for the purposes of this section.

*[For text of subds 5a and 10, see M.S.1980]*

**History:** 1981 c 178 s 44

### **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 311 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

(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.

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(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 311 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**Subd. 2. Distributions in redemption of stock.** The provisions of section 302 of the Internal Revenue Code of 1954, as amended through December 31, 1980 shall apply to the determination of distributions in redemption of stock.

**Subd. 3. Distributions in redemption of stock to pay death taxes.** The effects on recipients of a distribution by a corporation shall be governed by the provisions of sections 303 to 307 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**Subd. 4.** [Repealed, 1981 c 178 s 119]

**Subd. 5.** [Repealed, 1981 c 178 s 119]

**Subd. 6.** [Repealed, 1981 c 178 s 119]

**Subd. 7.** [Repealed, 1981 c 178 s 119]

**History:** 1981 c 60 s 12; 1981 c 178 s 45,46

## 290.132 DISTRIBUTIONS BY CORPORATIONS; EFFECTS ON CORPORATION.

**Subdivision 1. Taxability of corporation on distribution.** No gain or loss shall be recognized to a corporation on the distribution, with respect to its stock as provided in section 311 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**Subd. 2. Effect on earnings and profits.** (a) Except as otherwise provided in this subdivision, the effect on earnings and profits shall be determined according to the provisions of section 312 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

(b) 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,

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subdivision 2 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.

(c) (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).

(d) (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 (c) 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 (c) 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,

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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.

**History:** 1981 c 60 s 13; 1981 c 178 s 47

## 290.133 DEFINITIONS, CONSTRUCTIVE OWNERSHIP OF STOCK.

*[For text of subd 1, see M.S.1980]*

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.

(c) The provisions concerning constructive ownership of stock as defined in section 318 of the Internal Revenue Code of 1954, as amended through December 31, 1980 shall apply.

Subd. 3. [Repealed, 1981 c 178 s 119]

**History:** 1981 c 178 s 48

## 290.134 CORPORATE LIQUIDATIONS; EFFECTS ON RECIPIENTS.

Subdivision 1. **Gain or loss to shareholders in corporate liquidations.** The effects on recipients of corporate liquidations shall be governed by the provisions of sections 331 to 334 of the Internal Revenue Code of 1954, as amended through December 31, 1980. However, in section 333(f)(2), the date December 31, 1932 shall be substituted for February 28, 1913 when determining accumulated earnings and profits.

Subd. 2. [Repealed, 1981 c 178 s 119]

Subd. 3. [Repealed, 1981 c 178 s 119]

Subd. 4. [Repealed, 1981 c 178 s 119]

**History:** 1981 c 178 s 49

## 290.135 CORPORATE LIQUIDATIONS; EFFECTS ON CORPORATION.

Subdivision 1. **General rule.** Gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation as provided in sections 336 to 346 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

Subd. 2. [Repealed, 1981 c 178 s 119]

Subd. 3. [Repealed, 1981 c 178 s 119]

Subd. 4. [Repealed, 1981 c 178 s 119]

**History:** 1981 c 178 s 50

NOTE: Subdivision 2 was also amended by Laws 1981, Chapter 60, Section 14 to read as follows:

"Subd. 2. **Gain or loss on sales or exchanges in connection with certain liquidation.** The determination of gain or loss on sales or exchanges in connection with certain liquidations shall be determined in accordance with the provisions of section 337 of the Internal Revenue Code of 1954, as amended through December 31, 1980."

**290.136 CORPORATE ORGANIZATIONS AND REORGANIZATIONS.**

Subdivision 1. **Transfer to corporation controlled by transferor.** The provisions of sections 351 to 361, 367, and 368 of the Internal Revenue Code of 1954, as amended through December 31, 1980 shall apply to corporate organizations and reorganizations.

Subd. 2. [Repealed, 1981 c 60 s 28]

Subd. 3. [Repealed, 1981 c 60 s 28]

Subd. 4. [Repealed, 1981 c 60 s 28]

Subd. 5. [Repealed, 1981 c 60 s 28]

Subd. 6. [Repealed, 1981 c 60 s 28]

Subd. 7. [Repealed, 1981 c 60 s 28]

[For text of subd 8, see M.S.1980]

Subd. 9. [Repealed, 1981 c 60 s 28]

**History:** 1981 c 60 s 15

**290.137** [Repealed, 1981 c 60 s 29]

**290.138 CARRYOVERS.**

Subdivision 1. [Repealed, 1981 c 60 s 28]

Subd. 2. [Repealed, 1981 c 60 s 28]

Subd. 3. **Carryovers in certain corporate acquisitions.** The provisions of sections 381 and 382 of the Internal Revenue Code of 1954, as amended through December 31, 1980, shall apply to carryovers in certain corporate acquisitions and special limitations on net operating loss carryovers.

**History:** 1981 c 60 s 16

**290.14 GAIN OR LOSS ON DISPOSITION OF PROPERTY, BASIS.**

Except as otherwise provided in this chapter, 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 or, in the case of an election under section 2032 (relating to alternate valuation) of the Internal Revenue Code of 1954, as amended

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through December 31, 1980, its valuation at the applicable valuation date prescribed by that section, or in the case of an election under section 2032A (relating to valuation of farm real property) of the Internal Revenue Code of 1954, as amended through December 31, 1980, its value determined by that section.

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 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.

(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

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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) 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.

(8) 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.

(9) 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:** 1981 c 178 s 51; 1981 c 343 s 9; 1Sp1981 c 4 art 1 s 134

## **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 290.131 to 290.139, 290.14 and 290.15 for the purpose of determining the loss or gain on the sale or other disposition thereof.

*[For text of subd 1a, see M.S.1980]*

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 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);

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(2) The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than one year, 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 one year, 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 one year, 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 one year, 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.

*[For text of subs 4 to 6, see M.S.1980]*

**Subd. 7. Bonds, other evidences of indebtedness.** (1) For the purpose of this section, the treatment of 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, shall be governed by the provisions of section 1232 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**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, 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 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 one year, and real property used in the trade or business, held for more than one year, 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 one year 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 one year. 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 (including losses not compensated for by insurance or otherwise) 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

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more than one year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this clause but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or as any capital asset held for more than one year, this clause shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

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 168 of the Internal Revenue Code of 1954, as in effect before its repeal by the Tax Reform Act of 1976, shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in this subdivision.

*[For text of subd 10, see M.S.1980]*

**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 governed by the provisions of section 1233 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**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 an option to buy or sell property shall be considered gain or loss as provided in section 1234 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

*[For text of subds 14 to 16, see M.S.1980]*

**History:** 1981 c 178 s 52-58

## 290.17 GROSS INCOME, ALLOCATION TO STATE.

*[For text of subds 1 and 1a, see M.S.1980]*

**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,

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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 290.25 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 290.08, subdivision 25, 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, 409 or 409A 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: 1981 c 178 s 59; 1Sp1981 c 1 art 9 s 7*

### 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 (7), 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.** The adjusted gross income shall be computed by deducting from the gross income assignable to this state under section 290.17, the deduction for

allowable federal income taxes determined under the provisions of sections 290.09, subdivision 4, 290.10 (8), (9) or (10), and 290.18.

This deduction shall be allowed to individuals, estates, or trusts (i) for taxable years beginning after December 31, 1980 in the taxable year to which the liability applies. Such liability includes the portion of self-employment tax allowed under section 290.10, clause (8). The self-employment tax must be deducted by the person who is deriving the income. When the federal tax liability is joint and several under the computation of a joint federal return of husband and wife, the federal tax liability must be split between the spouses in the same ratio that the federal adjusted gross income of that spouse bears to the total federal adjusted gross income.

(ii) taxes paid for a taxable year beginning before January 1, 1981 shall be allowed as follows:

(1) Those taxes paid in a taxable year beginning before January 1, 1981, shall be claimed in the year in which the payment was made.

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(2) Those paid in a taxable year beginning after December 31, 1980 shall be divided and deducted in equal installments reflected by the yearly periods beginning with the first day of the taxable year in which the payment was made and ending December 31, 1986.

(iii) In the case of a person who was self employed during all or a portion of the taxable year, the federal income tax liability for purposes of this section shall be increased by the self-employment tax allowed under section 290.10, clause (8).

(iv) If a taxpayer's federal tax liability is eventually not paid by reason of compromise, discharge, or court order, the deduction allowed pursuant to this subdivision shall be disallowed for the taxable year in which the liability was accrued.

(v) In the event a federal tax liability for a taxable year commencing after December 31, 1980 is increased, decreased or modified, and such increase, decrease or modification has resulted in a change in the amount of Minnesota income tax in the year to which such increase, decrease or modification is attributable, the taxpayer's deduction under this section shall be modified for such year.

(vi) If the readjustments required in (iv) or (v) are for taxes reflected in the transition rule described in (ii)(2), the readjustment shall be made equally to the remaining installments and if a reduction to such installments is required under this readjustment which exceeds the total of all remaining installments, the remaining installments will be reduced to zero and the excess included in income as a federal income tax refund.

(vii) Refunds which are not involved with any readjustments under the transition rule shall be included in income under section 290.01, subdivision 20, clause (a)(6) if it is from a year beginning before January 1, 1981.

(viii) Refunds of taxes for years beginning after December 31, 1980, shall be used to adjust the deduction in the taxable year of the liability unless that year is closed by statute and no other adjustments are to be required or allowable in which case such refund shall be reportable in the year received.

*[For text of subd 3, see M.S.1980]*

**Subd. 4. Taxable net income adjustment factor.** For the taxable year beginning after December 31, 1980 and ending before January 1, 1982, the commissioner of revenue shall adjust taxable net income by multiplying the taxable net income of each individual, estate and trust by a fraction, the numerator of which is one plus the predicted rate of growth in average Minnesota gross income between tax year 1980 and tax year 1981. The denominator of the adjustment fraction shall be one plus the product of (a) the predicted rate of growth in average Minnesota gross income as determined above, and (b) the difference between the ratio of Minnesota gross income to Minnesota adjusted gross income and the product of the ratio of federal taxes paid to Minnesota adjusted gross income and an estimate of average federal income tax elasticity relating percent changes in federal adjusted gross income to percent changes in net federal income tax liabilities.

For each taxable year beginning after December 31, 1981, the commissioner of revenue shall adjust taxable net income by multiplying the taxable net income of each individual, estate, and trust by an adjustment factor determined by multiplying the previous year's adjustment factor by the current year adjustment factor as defined above using data appropriate to the current year.

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The data used shall reflect the most current aggregate tax statistics collected and tabulated by the department of revenue. The estimate of the percentage increase in Minnesota gross income shall be based on the best available data sources and reasonable forecasting procedures. The estimate of federal income tax elasticity shall reflect the best available sources of information, including the judgment of the United States Internal Revenue Service and the United States Treasury, Office of Tax Analysis. The determination of the commissioner pursuant to this section shall not be considered a "rule" and shall not be subject to the administrative procedures act contained in chapter 15.

No later than October 1 of each tax year, the commissioner shall announce the adjustment factor to be applied to taxable net income, including its separate components, and the estimate of federal elasticity.

**History:** 1981 c 178 s 60,61; 1Sp1981 c 1 art 1 s 4; 1Sp1981 c 3 s 4

## 290.21 CREDITS AGAINST TAXABLE NET INCOME.

Subdivision 1. The following deductions shall be allowed from gross income in computing net income for individuals, and from taxable net income for corporations.

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,

(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 deduction 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 major 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.

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(2) contributions made by a national committeeman, national committeewoman, state chairman, or state chairwoman of a major political party, as defined in section 200.02, subdivision 7, \$1,000,

(3) contributions made by a congressional district committeeman or committeewoman of a major political party, as defined in section 200.02, subdivision 7, \$350,

(4) contributions made by a county chairman or a county chairwoman of a major political party, as defined in section 200.02, subdivision 7, \$150;

(f) in the case of an individual, the total deduction 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 deduction 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 deduction 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 deduction under subparagraph (i). For purposes of paragraph (f) the term Minnesota gross income shall also include the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1980;

(g) in the case of a corporation, the total deduction hereunder shall not exceed 15 percent of the taxpayer's taxable net income less the deductions 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 deduction shall be allowed under this subdivision to the extent that a deduction is allowable for federal income tax purposes.

Subd. 3a. No deduction 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

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are declared was derived from business done within and without this state, then so much of the remainder shall be allowed as a deduction 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 deduction 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 deduction 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 deduction has been received from income arising out of business done in this state.

(c) The dividend deduction 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.

*[For text of subds 5 and 6, see M.S.1980]*

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 3f, clause (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 170(b)(1)(A)(ii) 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 deduction 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 deduction 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:** 1981 c 29 art VII s 31; 1981 c 178 s 62-66

### 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.

**History:** 1981 c 178 s 67

### 290.23 ESTATES AND TRUSTS; COMPUTATION OF NET INCOME, CREDITS; DEDUCTIONS.

Subdivision 1. [Repealed, 1981 c 178 s 119]

Subd. 2. [Repealed, 1981 c 178 s 119]

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 290.01, subdivision 20; 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.

[For text of subd 4, see M.S.1980]

Subd. 5. **Distributable net income, income, beneficiary; defined.** (1) For purposes of sections 290.22 through 290.25, the term "distributable net income" means the same as that term is defined in section 643(a) of the Internal Revenue Code of 1954, as amended through December 31, 1980 with the following modification:

There shall be included any tax-exempt interest to which section 290.01, subdivision 20, clause (b), subparagraph (1) 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 deduction under section 642(c) of the Internal Revenue Code of 1954, as amended through December 31, 1980, the amount of the modification shall be reduced to the extent that the amount of

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income which is paid, permanently set aside, or to be used for the purposes specified in that section of the Internal Revenue Code is deemed to consist of items specified in the modification. 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) The term "income," and the term "beneficiary" have the same meaning as those terms are defined in section 643(b) and (c) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

Subd. 6. [Repealed, 1981 c 178 s 119]

Subd. 7. [Repealed, 1981 c 178 s 119]

Subd. 8. [Repealed, 1981 c 178 s 119]

Subd. 9. **Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.** The provisions of sections 652, 662, 663 and 664(b) of the Internal Revenue Code of 1954, as amended through December 31, 1980, shall apply to inclusion of amounts in gross income of beneficiaries.

Subd. 10. [Repealed, 1981 c 178 s 119]

Subd. 11. [Repealed, 1981 c 178 s 119]

Subd. 12. [Repealed, 1981 c 178 s 119]

Subd. 13. [Repealed, 1981 c 178 s 119]

Subd. 14. [Repealed, 1981 c 178 s 119]

Subd. 15. **Accumulations after December 31, 1976.** 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.

**History:** 1981 c 178 s 68-71

**290.24** [Repealed, 1981 c 178 s 119]

## **290.25 TRUSTS; GRANTOR TREATED AS SUBSTANTIAL OWNER.**

Subdivision 1. The provisions of sections 671 to 679, 681 and 682 of the Internal Revenue Code of 1954, as amended through December 31, 1980, shall apply to grantors and others treated as substantial owners and other provisions concerning estates and trusts.

Subd. 2. [Repealed, 1981 c 178 s 119]

Subd. 3. [Repealed, 1981 c 178 s 119]

Subd. 4. [Repealed, 1981 c 178 s 119]

Subd. 5. [Repealed, 1981 c 178 s 119]

**History:** 1981 c 178 s 72

## **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 chapter shall apply with respect to such trust if such trust comes within the provisions of sections 401 and 402 of the Internal Revenue Code of

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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, 1980 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.

**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 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.** [Repealed, 1981 c 178 s 119]

*[For text of subds 5 and 6, see M.S.1980]*

**Subd. 7.** [Repealed, 1981 c 178 s 119]

**History:** 1981 c 60 s 17; 1981 c 178 s 73-75

**290.27** [Repealed, 1981 c 178 s 119]

**290.28** [Repealed, 1981 c 178 s 119]

NOTE: Subdivision 3 was also amended by Laws 1981, Chapter 31, Section 7 to read as follows:

"Subd. 3. **Income of an estate or trust in case of divorce.** (1) There shall be included in the gross income of a person who is divorced or legally separated under a decree of divorce or of legal separation (or who is separated pursuant to a written separation agreement) the amount of the income of any trust which the person is entitled to receive and which, except for this subdivision, would be includible in the gross income of the person's spouse, and the amount shall not, despite any other provision of this chapter, be includible in the gross income of the spouse. This paragraph shall not apply to that part of any 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 the income, as a sum which is payable for the support of minor children of the spouse. In case the income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, the income, to the extent of the sum payable for support, shall be considered a payment for support.

(2) For purposes of computing the taxable income of the estate or trust and the taxable income of a person to whom paragraph (1) applies, the person 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 the portion is required to be included."

## **290.281 COMMON TRUST FUND.**

*[For text of subd 1, see M.S.1980]*

**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 deduction provided in section 290.21, subdivision 3, for contributions shall be allowed.

*[For text of subds 3 to 6, see M.S.1980]*

**History:** 1981 c 178 s 76

**290.31 PARTNERSHIPS; INDIVIDUAL LIABILITY OF PARTNERS.**

*[For text of subd 1, see M.S.1980]*

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 one year,

(b) gains and losses from sales or exchanges of capital assets held for more than one year,

(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 deduction 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 deduction 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 except as provided in section 703(b) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

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 the partner's interest in the partnership, determined by taking into account all facts and circumstances, if

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(a) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction or credit, or item thereof, or

(b) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

(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.

*[For text of subd 5, see M.S.1980]*

**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

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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 (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise), 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.

*[For text of subs 7 and 8, see M.S.1980]*

**Subd. 8a. Organization and syndication fees.** The treatment of organization and syndication fees shall be governed by the provisions of section 709 of the Internal Revenue Code of 1954, as amended through December 31, 1980.

**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. The foregoing rule shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company within the meaning of section 351 of the Internal Revenue Code of 1954, as amended through December 31, 1980, if the partnership were incorporated.

**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, increased by any amount of gain recognized to the contributing partner at such time.

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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, increased by any amount of gain recognized to the contributing partner at such time.

*[For text of subds 12 to 20, see M.S.1980]*

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 section, the term "unrealized receivables" means "unrealized receivables" as defined in section 751(c) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

(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.

*[For text of subds 22 to 27, see M.S.1980]*

**History:** 1981 c 60 s 18; 1981 c 178 s 77-85

## **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 deduction 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 deduction 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:** 1981 c 178 s 86

#### 290.34 CORPORATIONS, SPECIAL PROVISIONS.

*[For text of subds 1 and 2, see M.S.1980]*

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. 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.

**History:** 1981 c 178 s 87

### **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 on premiums imposed by sections 69.54 to 69.56) 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:** 1981 c 178 s 88; 1Sp1981 c 4 art 1 s 135

### **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.

In the case of a decedent who has gross income in excess of the minimum amount at which an individual is required to file a return, the decedent's final income tax return shall be filed by his or her personal representative, if any. If there is no personal representative, the return shall be filed by the successors (as defined in section 524.1-201) who receive any property of the decedent.

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. 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.

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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)(1), (b)(6) and (b)(11), 290.08, and 290.17.

*[For text of subd 2, see M.S.1980]*

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 code 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; and the commissioner may require the taxpayer to 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.

**History:** 1981 c 343 s 10; 1Sp1981 c 3 s 5

## 290.39 RETURN; FORM AND FILING.

Subdivision 1. **In general.** Every return shall specifically set forth the items of gross income, deductions, 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.

In the event a taxpayer files a return which does not contain all the information required by this subdivision, the commissioner may, in addition to any other remedies which may be available, bring an action in equity by the state against the taxpayer for an injunction ordering the taxpayer to file a complete and proper return in accordance with this subdivision. The district courts of this state shall have jurisdiction over the action and disobedience of an injunction issued under this subdivision shall be punished as a contempt of district court.

*[For text of subd 1a, see M.S.1980]*

Subd. 2. **Separate computations on a single return.** Notwithstanding the provisions of section 290.61, a husband and wife may elect to compute their Minnesota income tax separately on a single return, in which event:

(a) if the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of tax of such spouse as computed separately, 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 of such other spouse as computed separately;

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(b) if the sum of the payments made by both spouses with respect to the taxes of both as computed separately, 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 sum of the payments made by both spouses with respect to the taxes of both as computed separately, including withheld and estimated taxes, is less than the total of the taxes due, the liability for the unpaid tax shall be joint and several; provided that a spouse may be relieved of liability in those cases contained in section 6013(e) of the Internal Revenue Code of 1954 as amended through December 31, 1980 (for purposes of computing the 25 percent test contained in that section, the amount of gross income stated in the return shall include the total gross income of both spouses);

(d) 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.

Subd. 3. **Short form.** The commissioner may, in his discretion, provide for use a short form individual income tax return which shall be in the form and provide for items as the commissioner may prescribe which are consistent with the provisions of this chapter, notwithstanding any other law to the contrary. The political checkoff provided in section 10A.31 shall be included on the short form.

**History:** 1981 c 178 s 89; 1981 c 343 s 11-13

## 290.41 INFORMATION RETURNS.

*[For text of subd 1, see M.S.1980]*

Subd. 2. **By persons, corporations, cooperatives, governmental entities or school districts.** Every person, corporation, or cooperative, the state of Minnesota and its political subdivisions, and every city, county and school district in Minnesota, 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 royalties, or of \$10 or more on account of interest, or \$10 or more on account of dividends or patronage dividends, or \$600 or more on account of either wages, salaries, commissions, fees, prizes, awards, pensions, annuities, or any other fixed or determinable gains, profits or income, not otherwise reportable under section 290.92, subdivision 7, or on account of earnings in excess of \$10 distributed to its members by savings, building and loan associations or credit unions chartered under the laws of this state or the United States, (a) shall make a return (except in cases where a valid agreement to participate in the combined federal and state information reporting system has been entered into, and such return is therefore filed only with the commissioner of internal revenue pursuant to the applicable filing and informational reporting requirements of the Internal Revenue Code of 1954 as amended through December 31, 1980) 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, and (b) shall make a return in respect to the total number of such payments and total amount of such payments, for each category of income specified, which were in excess of the amounts specified. This subdivision shall not apply to the payment of interest or dividends to a person who was a nonresident of Minnesota for the entire year.

*[For text of subds 3 and 4, see M.S.1980]*

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Subd. 5. **Relating to energy grants and financing.** Every person who administers a federal, state or local program a principal purpose of which is to provide subsidized financing or grants for projects to produce energy shall make a return meeting the requirements of section 6050D of the Internal Revenue Code of 1954, as amended through December 31, 1980.

Subd. 6. **Real property holdings of aliens.** Every person and corporation required to make a return under section 6039C (relating to information return on a foreign person holding a United States real property interest) of the Internal Revenue Code of 1954, as amended through December 31, 1980, shall make a similar return for the commissioner for foreign persons holding a Minnesota real property interest.

Subd. 7. **Unemployment compensation.** Every person who makes payments of unemployment compensation aggregating \$10 or more to any individual during any calendar year and who is required to make and file a return pursuant to section 6050B of the Internal Revenue Code of 1954 as amended through December 31, 1980, shall file with the commissioner of revenue a copy of such return.

Subd. 8. **Failure to file return.** In the case of each failure to file a return required by this section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to wilful neglect, the payer failing to file such return shall pay to the commissioner a penalty of \$10 for each such failure, but the total amount imposed on the delinquent payer for all such failures during any calendar year shall not exceed \$1,000. The penalty shall be collected in the same manner as any delinquent income tax.

**History:** 1981 c 60 s 19,20; 1981 c 343 s 14-16

## 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:

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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 as provided in section 290.65. 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.

(7) Every person making a return under section 290.41 (except subdivisions 3 and 4) shall furnish to each person whose name is set forth in the return a written statement showing

(A) the name and address of the person making the return, and

(B) the aggregate amount of payments to the person shown on the return.

This written statement shall be furnished to the person on or before January 31 of the year following the calendar year for which the return was made. A duplicate of this written statement shall be furnished to the commissioner on or before February 28 of the year following the calendar year for which the return was made.

**History:** 1981 c 178 s 90; 1981 c 343 s 17

## 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, or such other place as the commissioner may designate.

**History:** 1981 c 343 s 18

## 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 added to the tax or deducted from the refund that would otherwise be payable by or to that person and paid into an account 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 tax or refund shall be paid into the non-game wildlife management account.

The sum of the amounts so designated to be paid shall be credited to the non-game wildlife management account for use by the non-game section of the division of wildlife in the department of natural resources. The commissioner of natural resources shall submit a work program for each fiscal year and semi-annual progress reports to the legislative commission on Minnesota resources in the form determined by the commission. None of the money provided in this section may be expended unless the commission has approved the work program.

**History:** 1981 c 356 s 340

#### **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, if any. If there is no personal representative, the tax shall be paid by the successors (as defined in section 524.1-201) to the extent they receive property from the decedent.

(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:** 1981 c 343 s 19

#### **290.45 PAYMENT OF TAX, TIME FOR.**

*[For text of subds 1 and 2, see M.S.1980]*

Subd. 3. **Payment before date due.** A tax imposed by this chapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

*[For text of subd 4, see M.S.1980]*

**History:** 1981 c 178 s 91

#### **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.

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.

In the case of an individual, estate or trust, the commissioner may audit and adjust the taxpayer's computation of federal adjusted gross income (or federal taxable income for estates or trusts) to make it properly conform with the provisions of section 290.01, subdivision 20.

**History:** 1981 c 178 s 92; 1981 c 343 s 20

## **290.48 DELINQUENT TAXES, COLLECTION.**

*[For text of subd 1, see M.S.1980]*

**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

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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 chapter.

*[For text of subs 3 to 9, see M.S.1980]*

**History:** 1981 c 178 s 93

## 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, or to the taxpayer's last known address, 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.

*[For text of subs 2 and 3, see M.S.1980]*

Subd. 4. **Omission of corporate liquidation proceeds.** If the taxpayer omits from gross income an amount properly includible therein under section 290.134, 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.

*[For text of subs 5 to 10, see M.S.1980]*

**History:** 1981 c 178 s 94,95

## 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.

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(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 or a capital loss carryback, interest shall be computed only from the end of the taxable year in which the loss occurs.

(f) If a taxpayer reports a change in his federal gross income, items of tax preference, deductions, credits, 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 except as provided in subdivision 2.

(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.

*[For text of subd 2, see M.S.1980]*

**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.

*[For text of subd 4, see M.S.1980]*

**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 or combined 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

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determined by the commissioner to be an overpayment of the income tax for a preceding taxable year.

**History:** 1981 c 178 s 96-98

## 290.53 PENALTIES, INTEREST.

**Subdivision 1. Failure to pay tax.** If any tax imposed by this chapter 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.

*[For text of subd 2, see M.S.1980]*

**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 chapter, shall fail to file any return required by this chapter, 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. The amount of the tax and any other penalties together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. 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 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. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid.

**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 chapter 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 section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and 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.

*[For text of subd 5, see M.S.1980]*

**History:** 1981 c 178 s 99,100; 1981 c 343 s 21,22; 1Sp1981 c 4 art 1 s 136

### **290.56 EXAMINATION OF TAXPAYER'S RECORDS; FEDERAL RETURNS; EXTENSIONS.**

*[For text of subd 1, see M.S.1980]*

**Subd. 2. Change in federal return.** If the amount of gross income, items of tax preference, deductions, or credits for any year of any taxpayer as reported to the Internal Revenue Service 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, items of tax preference, deductions, or credits, 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 within 90 days as required by subdivision 2, the commissioner may, within six years thereafter, recompute the tax, including a refundment thereof, 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 within 90 days, 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.

*[For text of subd 5, see M.S.1980]*

**History:** 1981 c 178 s 101-103

**290.60** [Repealed, 1981 c 178 s 119]

### **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

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information 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 sections 290.612 and 302A.821. 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.

An employee of the department of revenue may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under this chapter, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this chapter.

**History:** 1981 c 270 s 127; 1981 c 343 s 23

NOTE: The amendment to this section by Laws 1981, Chapter 270, Section 127 is effective January 1, 1984. See Laws 1981, Chapter 270, Section 144.

**290.65 TIME LIMITS; PENALTIES.**

*[For text of subds 2 to 16, see M.S.1980]*

Subd. 17. [Repealed, 1981 c 178 s 119]

**290.92 TAX WITHHELD AT SOURCE UPON WAGES.**

Subdivision 1. **Definitions.** (1) **Wages.** For purposes of this section, the term "wages" means the same as that term is defined in section 3401(a) and (f) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

(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, 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. 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 withhold-

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ing 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.

(9) **Tips.** In the case of tips which constitute wages, this subdivision shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended through December 31, 1980, and only to the extent that the tax can be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053 of the Internal Revenue Code of 1954 as amended through December 31, 1980 to which subdivision 1 is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds as are under the control of the employer minus any tax required by other provisions of state or federal law to be collected from such wages and funds.

*[For text of subs 3 to 4a, see M.S.1980]*

Subd. 5. **Exemptions.** (1) **Entitlement.** An employee receiving wages shall on any day be entitled to claim withholding exemptions equal to the same number as the personal credits that he is entitled to claim under the provisions of section 290.06, subdivision 3f, (not including those credits that the taxpayer's spouse may claim).

(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, May 1, July 1, or October 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

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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 and which are allowable for federal withholding purposes.

Subd. 5a. **Verification of withholding exemptions; appeal.** (1) An employer shall submit to the commissioner a copy of any withholding exemption certificate received from an employee on which the employee claims any of the following:

- (a) a total number of withholding exemptions in excess of nine, or
- (b) a status that would exempt the employee from Minnesota withholding, unless the employee is a nonresident exempt from withholding under subdivision 4a, clause (3), or the employer reasonably expects, at the time that the certificate is received, that the employee's wages under subdivision 1 from the employer will not then usually exceed \$200 per week, or
- (c) any number of withholding exemptions which the employer has reason to believe is in excess of the number to which the employee is entitled.

(2) Copies of exemption certificates required to be submitted by clause (1) shall be submitted to the commissioner within 30 days after receipt by the employer unless the employer is also required by federal law to submit copies to the Internal Revenue Service, in which case the employer may elect to submit the copies to the commissioner at the same time that he is required to submit them to the Internal Revenue Service.

(3) An employer who submits a copy of a withholding exemption certificate in accordance with clause (1) shall honor the certificate until notified by the commissioner that the certificate is invalid. The commissioner shall mail a copy of any such notice to the employee. Upon notification that a particular certificate is invalid, the employer shall not honor that certificate or any subsequent certificate unless instructed to do so by the commissioner. The employer shall allow the employee the number of exemptions and compute the withholding tax as instructed by the commissioner in accordance with clause (4).

(4) The commissioner may require an employee to verify that he or she is entitled to the number of exemptions or to the exempt status claimed on the

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withholding exemption certificate or, that he or she is a nonresident. The employee shall be allowed at least 30 days to submit the verification, after which time the commissioner shall, on the basis of the best information available to him, determine the employee's status and allow the employee the maximum number of withholding exemptions allowable under this chapter. The commissioner shall mail a notice of this determination to the employee at the address listed on the exemption certificate in question. Notwithstanding the provisions of section 290.61, the commissioner may notify the employer of this determination and instruct the employer to withhold tax in accordance with the determination.

(5) The commissioner's determination under clause (4) shall be appealable to tax court in accordance with section 271.06, and shall remain in effect for withholding tax purposes pending disposition of any appeal.

**Subd. 6. Returns, deposits.** (1) (a) **Returns.** Every employer who is required to deduct and withhold tax under subdivision 2a or 3 shall file a return with the commissioner for each quarterly period, on or before the last day of the month following the close of each quarterly period, unless otherwise prescribed by the commissioner. Any tax required to be deducted and withheld during the quarterly period shall be paid with the return unless an earlier time for payment is provided herein. 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.

The return shall be in the form and contain the information prescribed by the commissioner. The commissioner may grant a reasonable extension of time for filing the return and paying the tax, but no extension shall be granted for more than six months.

(b) **Advance deposits required in certain cases.** (i) Unless clause (ii) is applicable, if during any calendar month, other than the last month of the calendar quarter, the aggregate amount of the tax withheld during that quarter under subdivision 2a or 3 exceeds \$200, or beginning January 1, 1982, \$500, the employer shall deposit the aggregate amount with the commissioner within 15 days after the close of the calendar month. (ii) If at the close of any eighth-monthly period the aggregate amount of undeposited taxes is \$3,000 or more, the employer shall deposit the undeposited taxes with the commissioner within three banking days after the close of the eighth-monthly period. For purposes of this subparagraph, the term "eighth-monthly period" means the first three days of a calendar month, the fourth day through the seventh day of a calendar month, the eighth day through the 11th day of a calendar month, the 12th day through the 15th day of a calendar month, the 16th day through the 19th day of a calendar month, the 20th day through the 22nd day of a calendar month, the 23rd day through the 25th day of a calendar month, or the portion of a calendar month following the 25th day of such month.

(c) **Other methods.** The commissioner shall have the power by rule to prescribe other return periods or deposit requirements. 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

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duration of the reporting period be more than one year, provided that for employers with annual withholding tax liabilities of less than \$1,200 the reporting period shall be no more frequent than quarterly.

(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

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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 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. 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.

*[For text of subd 6a, see M.S.1980]*

## **Subd. 7. Withholding statement to employee or payee and to commissioner.**

(1) Every person required to deduct and withhold from an employee a tax under

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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, or who paid wages not subject to withholding under subdivision 2a or 3 to an employee in excess of \$600, or who has entered into a voluntary withholding agreement with a payee pursuant to subdivision 20, 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, at the employee's request within 30 days after the last payment of remuneration is made, a written statement showing the following:

- (a) Name of such person,
- (b) The name of the employee or payee and his social security account number,
- (c) The total amount of wages as that term is defined in subdivision 1(1), and/or the total amount of remuneration subject to withholding pursuant to subdivision 20, and the amount of sick pay as required under section 6051(f) of the Internal Revenue Code of 1954, as amended through December 31, 1980,
- (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 or payers required to furnish such statements to their employees or payees under this subdivision.

(4) A duplicate of any statement made pursuant to this subdivision and in accordance with rules prescribed by the commissioner, along with a reconciliation in such form as the commissioner may prescribe of all such statements for the calendar year (including a reconciliation of the quarterly returns required to be filed pursuant to subdivision 6), shall be filed with the commissioner on or before February 28 of the year after the payments were made.

*[For text of subds 8 to 14, see M.S.1980]*

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

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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 of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. 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 amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. 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 or payee and a duplicate statement to the commissioner, or to furnish a reconciliation of such statements (and quarterly returns) to the commissioner, wilfully furnishes a false or fraudulent statement to an employee or payee or a false or fraudulent duplicate statement or reconciliation of statements (and quarterly returns) to the commissioner, or wilfully fails to furnish a statement or such reconciliation 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 of wages to an employee and a duplicate statement to the commissioner, who wilfully furnishes a false or fraudulent statement of wages to an employee or a false or fraudulent duplicate statement of wages to the commissioner, or who wilfully fails to furnish such 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.

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(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.

(10) In addition to any other penalty provided by law, any employee who furnishes a withholding exemption certificate to his employer which the employee has reason to know contains a materially incorrect statement shall be liable to the commissioner of revenue for a penalty of \$100 for each instance. The penalty shall be immediately due and payable and may be collected in the same manner as any delinquent income tax.

(11) In addition to any other penalty provided by law, any employer who fails to submit a copy of a withholding exemption certificate required by subdivision 5a, clause (1)(a), (1)(b), or (2) shall be liable to the commissioner of revenue for a penalty of \$50 for each instance. The penalty shall be immediately due and payable and may be collected in the manner provided in subdivision 6(8).

**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 5 U.S.C. Section 5517.

*[For text of subds 17 and 18, see M.S.1980]*

**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 provision contained in 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, 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. Any payment to an individual of sick pay which does not constitute wages, (determined without regard to this subdivision), shall be treated as if it were a payment of wages by an employer to an employee for a payroll period, if, at the time the payment is made a request that such sick pay be subject to withholding under this section is in effect. Sick pay means any amount which

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(2) A request for withholding, the amount withheld, and sick pay paid pursuant to certain collective bargaining agreements shall conform with the provisions of section 3402(o)(3), (4), and (5) of the Internal Revenue Code of 1954, as amended through December 31, 1980.

(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.

*[For text of subs 21 to 24, see M.S.1980]*

**Subd. 25. Delegation of duty of employer.** The delegation to an agent, fiduciary or employee of an employer of any duty prescribed for the employer by this section shall not relieve the employer of full compliance with such duty.

**History:** 1981 c 13 s 1; 1981 c 60 s 21; 1981 c 178 s 104,107; 1981 c 343 s 24,29; 1Sp1981 c 4 art 2 s 29

### **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 \$100.

*[For text of subd 2, see M.S.1980]*

**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

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estimates as the sum of the taxes imposed by this chapter (other than the tax imposed by section 290.091), for the taxable year, minus the amount which the individual estimates as his allowable credits against income tax under this chapter.

*[For text of subd 4, see M.S.1980]*

**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 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 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

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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.

*[For text of subs 7 to 9, see M.S.1980]*

**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 80 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.

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(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 the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

(a) The 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 the personal credits 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 80 percent (66  $\frac{2}{3}$  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.

*[For text of subd 11, see M.S.1980]*

**History:** 1981 c 178 s 108,109; 1981 c 343 s 30-32

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## 290.931 DECLARATIONS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. **Requirements of declaration.** Every corporation subject to taxation under this chapter (excluding sections 290.091 and 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.

*[For text of subd 3, see M.S.1980]*

Subd. 4. [Repealed, 1981 c 178 s 119]

*[For text of subd 5, see M.S.1980]*

**History:** 1981 c 343 s 33

## 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 2nd month and before the 1st day of the 6th month of the taxable year	the 15th day of the 6th month of the taxable year
after the last day of the 5th month and before the 1st day of the 9th month of the taxable year	the 15th day of the 9th month of the taxable year
after the last day of the 8th month and before the 1st day of the 12th month of the taxable year	the 15th day of the 12th month of the taxable year

*[For text of subd 2, see M.S.1980]*

Subd. 3. [Repealed, 1981 c 178 s 119]

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 section. No such extension shall be for more than six months.

**History:** 1981 c 178 s 110,111

## 290.933 INSTALLMENT PAYMENTS OF ESTIMATED INCOME TAX BY CORPORATIONS.

*[For text of subds 1 and 2, see M.S.1980]*

Subd. 3. [Repealed, 1981 c 178 s 119]

*[For text of subd 4, see M.S.1980]*

**290.934 FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.**

*[For text of subds 1 to 3, see M.S.1980]*

Subd. 4. **Exception.** (a) 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, 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.

(b) Notwithstanding clause (a), in the case of a large corporation, the addition to the tax with respect to any underpayment of any installment shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment is less than the amount required to be paid on or before the date. The amount required to be paid as estimated tax for the taxable year shall in no event be less than 60 percent of (A) the tax shown on the return for the taxable year, or (B) if no return was filed, the tax for the year. The term "large corporation" means any corporation (or any predecessor corporation) which had taxable net income of \$1,000,000 or more for any taxable year during the testing period. The term "testing period" means the three taxable years immediately preceding the taxable year involved.

Subd. 5. **Definition of tax.** The term "tax" means the tax imposed by chapter 290.

Subd. 6. [Repealed, 1981 c 178 s 119]

*[For text of subd 7, see M.S.1980]*

**History:** 1981 c 60 s 22; 1981 c 343 s 34,35

**290.971 ELECTION OF CERTAIN SMALL BUSINESS CORPORATIONS AS TO TAXABLE STATUS; DEFINITIONS.**

Subdivision 1. [Repealed, 1981 c 344 s 4]

Subd. 2. [Repealed, 1981 c 344 s 4]

Subd. 3. [Repealed, 1981 c 344 s 4]

Subd. 4. [Repealed, 1981 c 344 s 4]

Subd. 5. [Repealed, 1980 c 607 art 1 s 33; 1981 c 344 s 4]

Subd. 6. [Repealed, 1981 c 344 s 4]

Subd. 7. **"Estate" defined.** For purposes of subdivision 1, clause (2), the term "estate" includes the estate of an individual in a case under title 11 of the United States Code.

**History:** 1981 c 60 s 23

**290.972** Subdivision 1. [Repealed, 1981 c 344 s 4]

Subd. 2. [Repealed, 1981 c 344 s 4]

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Subd. 3. [Repealed, 1981 c 344 s 4]

Subd. 4. [Repealed, 1981 c 344 s 4]

Subd. 5. [Repealed, 1981 c 344 s 4]

Subd. 6. [Repealed, 1981 c 344 s 4]

Subd. 7. [Repealed, 1980 c 419 s 46; 1981 c 344 s 4]

## **290.975 ELECTION BY SMALL BUSINESS CORPORATION.**

Any corporation having a valid election in effect under section 1372 of the Internal Revenue Code of 1954, as amended through December 31, 1980, shall not be subject to the taxes imposed by this chapter, except the tax imposed under section 290.92.

**History:** 1981 c 344 s 2

## **290.974 RETURN OF ELECTING SMALL BUSINESS CORPORATION.**

Every electing small business corporation under section 290.9725 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 290.01, subdivision 20 and 290.9725 as the commissioner may by forms and regulations prescribe.

**History:** 1981 c 344 s 3

**290.975** [Repealed, 1981 c 344 s 4]