# Income and Estate Taxes

# CHAPTER 290

# INCOME AND EXCISE TAXES

## 290.01 DEFINITIONS.

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

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

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

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

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

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

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

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

Subd. 7a. **Resident estate.** Resident estate means the estate of a deceased person where (a) the decedent was domiciled in Minnesota at the date of his death, or (b) the personal representative or fiduciary was appointed by a Minnesota court in a proceeding other than an ancillary proceeding, or (c) the administration of the estate is carried on in Minnesota in a proceeding other than an ancillary proceeding.

Subd. 7b. **Resident trust.** Resident trust means a trust except a grantor type trust which is administered in this state. The term "grantor type trust" means a trust where the income or gains of the trust are taxable to the grantor or others treated as substantial owners under sections 671 to 678 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 19. **Net income.** The term "net income" means the gross income, as defined in subdivision 20, less the deductions allowed by section 290.09 (and for individuals, section 290.21) to the extent allowed by section 290.18, subdivision 1.

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.

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 and in subdivisions 20a to 20f. 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 in subdivisions 20a to 20f, 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, 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.

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.

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

(iii) The Internal Revenue Code of 1954, as amended through December 31, 1980, and as amended by sections 302(b) and 501 to 509 of Public Law Number 97-34, 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) sections 122, 123, 126, 201, 202, 203, 204, 211, 213, 214, 251, 261, 264, 265, 311(g)(3), 313, 314(a)(1), 321(a), 501 to 507, 811, and 812 of the Economic Recovery Tax Act of 1981, Public Law Number 97-34 and section 113 of Public Law Number 97-119 shall be effective at the same time that they become effective for federal income tax purposes.

(iv) The Internal Revenue Code of 1954, as amended through December 31, 1981, shall be in effect for taxable years beginning after December 31, 1981.

References to the Internal Revenue Code of 1954 in subdivisions 20a, 20b, 20c, and 20e shall mean the code in effect for the purpose of defining gross income for the applicable taxable year.

(a) [Renumbered subd. 20a]

(b) [Renumbered subd. 20b]

(c) [Renumbered subd. 20c]

(d) [Renumbered subd. 20d]

(e) [Renumbered subd. 20e]

(f) [Renumbered subd. 20f]

Subd. 20a. **Modifications increasing federal adjusted gross income.** There shall be added to federal adjusted gross income:

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

(2) 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 under subdivision 20b, clause (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;

(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) 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 40 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 (7);

(17) 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;

(18) 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;

(19) 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);

(20) 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;

(21) The deduction for two-earner married couples provided in section 221 of the Internal Revenue Code of 1954;

(22) Interest on all-savers certificates which is excluded under section 128 of the Internal Revenue Code of 1954;

(23) Losses from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax;

(24) Expenses and depreciation attributable to property subject to Laws 1982, Chapter 523, Article 7, Section 3 which has not been registered;

(25) The amount of contributions to an individual retirement account, simplified employee pension plan, or self-employed retirement plan which is allowed under sections 311 and 312 of Public Law Number 97-34 to the extent those contributions were not an allowable deduction prior to the enactment of that law; and

(26) To the extent deducted in computing federal adjusted gross income, living expenses of a member of congress in excess of that allowable under section 290.09, subdivision 2, clause (a)(3).

Subd. 20b. **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 40 per centum of the portion of the gain. This modification shall not be applicable if the difference in basis is due to disallowance of depreciation pursuant to section 290.101.

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

(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 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 subdivision 20b, clause (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 subdivision 20b, clause (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;

(20) 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 subdivision 20a, clause (20);

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

(22) Interest earned on a contract for deed entered into for the sale of property for agricultural use if the rate of interest set in the contract is no more than nine percent per year for the duration of the term of the contract. This exclusion shall be available only if (1) the purchaser is an individual who, together with his spouse and dependents, has a total net worth valued at less than $150,000 and (2) the property sold under the contract is farm land as defined in section 41.52, subdivision 6 of no more than 1,000 acres that the purchaser intends to use for agricultural purposes. Compliance with these requirements shall be stated in an affidavit to be filed with the first income tax return on which the taxpayer claims the exclusion provided in this clause. Upon request accompanied by the information necessary to make the determination, the commissioner shall determine whether interest to be paid on a proposed transaction will qualify for this

exclusion; the determination shall be provided within 30 days of receipt of the request, unless the commissioner finds it necessary to obtain additional information, or verification of the information provided, in which case the determination shall be provided within 30 days of receipt of the final item of information or verification. The exclusion provided in this clause shall apply to interest earned on contracts for deed entered into after December 31, 1981 and before July 1, 1983;

(23) The penalty on the early withdrawal of an all-savers certificate as provided in section 128(e) of the Internal Revenue Code of 1954 to the extent that the interest was included in income under subdivision 20a, clause (22); and

(24) Income from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax.

Subd. 20c. **Modification for shareholders of small business corporations.** A modification affecting shareholders of electing small business corporations under section 1372 of the Internal Revenue Code of 1954 shall be made 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.

Subd. 20d. **Modification for amounts transferred to surplus.** 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.

Subd. 20e. **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. 20f. **Modification for accelerated cost recovery system.** A modification shall be made for the allowable deduction under the accelerated cost recovery system as provided in subdivision 28.

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, 1981, 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, 1981, 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.

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

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

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

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

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

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

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

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

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

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

Subd. 25. **Employee stock ownership trust.** The term "employee stock ownership trust" means a trust which 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, 1981.

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, 1981 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, 1981) 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, 1981 and to which sections 851 to 855 of the Code apply for the taxable year) consists of obligations of any authority, commission, or instrumentality of the United States as described in subdivision 20b, clause (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, 1981) 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 from an obligation of any authority, commission, or instrumentality of the United States that would be excludable from gross income under subdivision 20b, clause (1), or 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 of any authority, commission, or instrumentality of the United States as described in subdivision 20b, clause (1), or 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 20b, clause (1), or 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.

Subd. 28. The allowable deduction for the accelerated cost recovery system as provided in section 168 of the Internal Revenue Code shall be the same amount as provided in that section for individuals, estates, and trusts with the following modifications:

(1) For property placed in service after December 31, 1980 and for taxable years beginning before January 1, 1982, 15 percent of the allowance provided in section 168 of the Internal Revenue Code shall not be allowed.

(2)(a) For taxable years beginning after December 31, 1981 and before December 31, 1982, for 15 year real property as defined in section 168 of the Internal Revenue Code, 40 percent of the allowance provided in section 168 of the Internal Revenue Code shall not be allowed and for all other property, 17 percent of the allowance shall not be allowed.

(2)(b) For taxable years beginning after December 31, 1982, for 15 year real property as defined in section 168 of the Internal Revenue Code, 40 percent of the allowance provided in section 168 of the Internal Revenue Code shall not be allowed and for all other property 20 percent of the allowance shall not be allowed.

(3) For property placed in service after December 31, 1980 for which the taxpayer elects to use the straight line method provided in section 168(b)(3) or a method provided in section 168(e)(2) of the Internal Revenue Code, the modifications provided in clauses (1) and (2) do not apply.

(4) For property subject to the modifications contained in clause (1) or (2) above, the following modification shall be made after the entire amount of the allowable deduction for that property under the provision of section 168 of the Internal Revenue Code has been obtained. The remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

(a) 3 year property - 1 year.

(b) 5 year property - 2 years.

(c) 10 year property - 5 years.

(d) All 15 year property - 7 years.

(5) The basis of property to which section 168 of the Internal Revenue Code applies shall be its basis as provided in this chapter and including the modifications provided in this subdivision. The recapture tax provisions provided in sections 1245 and 1250 of the Internal Revenue Code shall apply but shall be calculated using the basis provided in the preceding sentence. When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to clause (1) or (2) can be written off as provided in clause (4).

(6) Wherever used in this subdivision, the term "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as amended through December 31, 1981.

(7) The modifications provided in this subdivision shall apply before applying any limitation to out of state losses contained in section 290.17 or farm losses contained in section 290.09, subdivision 29.

**History:** *1933 c 405 s 1,10,11,21,22; Ex1937 c 49 s 16; 1941 c 550 s 4,11; 1943 c 656 s 1,11; 1945 c 604 s 1,2,19; 1947 c 635 s 1; 1949 c 541 s 1; 1949 c 734 s 1-3; 1953 c 648 s 1; 1955 c 21 s 1; 1955 c 122 s 1; 1955 c 385 s 1; 1957 c 621 s 9; 1957 c 769 s 1; Ex1959 c 83 s 1; 1961 c 213 art 4 s 1; Ex1961 c 51 s 1; 1963 c 355 s 1; 1967 c 579 s 1; 1969 c 575 s 1; 1971 c 206 s 1; 1971 c 769 s 1,2; 1971 c 771 s 1; 1973 c 232 s 1; 1973 c 582 s 3; 1973 c 711 s 1,3; 1973 c 737 s 1; 1974 c 157 s 2; 1974 c 201 s 1; 1975 c 47 s 1; 1975 c 226 s 2; 1975 c 349 s 1-6,29; 1976 c 2 s 101; 1976 c 210 s 12; 1977 c 298 s 1; 1977 c 376 s 1,13; 1977 c 423 art 1 s 1; 1977 c 429 s 63; 1978 c 674 s 30; 1978 c 721 art 6 s 1; 1978 c 763 s 2; 1978 c 767 s 14,15; 1979 c 50 s 38; 1979 c 303 art 1 s 1; 1980 c 419 s 1; 1980 c 439 s 1; 1980 c 512 s 8; 1980 c 607 art 1 s 1,2,32; 1981 c 49 s 1; 1981 c 60 s 1,27; 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; 3Sp1981 c 2 art 3 s 2; 1982 c 523 art 1 s 1,2; art 7 s 1; art 40 s 1,2,14 (2394-1, 2394-10, 2394-21, 2394-22)*

## 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:** *1974 c 556 s 1; 1981 c 178 s 10*

**290.012 DEFINITIONS.**

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

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

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

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

**History:** *1974 c 556 s 2; 1975 c 437 art 9 s 1; 1976 c 334 s 12; 1977 c 423 art 1 s 2; 1978 c 767 s 16; 1979 c 303 art 1 s 2; 1982 c 523 art 1 s 3*

**290.013 ITEMS NOT TO BE TAKEN INTO ACCOUNT REPEATEDLY.**

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

**History:** *1977 c 376 s 3*

**290.02 EXCISE TAX ON CORPORATIONS; IMPOSITION, MEASUREMENT.**

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

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

**History:** *1933 c 405 s 2; Ex1937 c 49 s 2; 1947 c 635 s 2; 1974 c 556 s 18; 1975 c 349 s 7; 1976 c 2 s 102; 1982 c 523 art 1 s 4 (2394-2)*

**290.03 INCOME TAX; IMPOSITION, CLASSES OF TAXPAYERS.**

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

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

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

(2) Resident and non-resident individuals;

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

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

**History:** *1933 c 405 s 3; Ex1937 c 49 s 3; 1941 c 550 s 1; 1945 c 410 s 1; Ex1957 c 1 art 3; 1963 c 587 s 1; 1967 c 577 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 419 s 2; 1982 c 523 art 1 s 5 (2394-3)*

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

**290.032 LUMP SUM DISTRIBUTION TAX.**

Subdivision 1. There is hereby imposed as an addition to the annual income tax for a taxable year of a taxpayer in the classes described in section 290.03 a tax with respect to any distribution received by such taxpayer that is treated as a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1981, and that is subject to tax for such taxable year under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1981.

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, 1981, 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, 1981, to paragraph (1)(A) thereof shall instead be references to subdivision 1 of this section.

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

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

Subd. 5. An amount not to exceed $10,000 which is distributed to an individual as severance pay upon discontinuation of the individual's employment due to termination of business operations by the individual's employer may be treated as a lump sum distribution according to the provisions of this section if it is paid as a lump sum. For the payment to be treated as a lump sum distribution under this subdivision, the termination of the employer's business operation at that site must be reasonably likely to be permanent and to involve the discharge within a period of one year of at least 75 percent of the persons employed by that employer at that site. This subdivision shall not apply when the employer's business operation at that site is terminated because the business is sold to another person or corporation who will continue operations at that site and the individual is employed by the new person or corporation. For the purposes of this subdivision, "severance pay" shall mean an amount received for the cancellation of an employment contract or a collectively bargained termination payment in the nature of a substitute for income which would have been earned for personal services to be rendered in the future.

The minimum distribution allowance provided in sections 402 (e)(1)(C) and (D) of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall not apply to the computation allowed under this subdivision.

**History:** *1975 c 349 s 28; 1977 c 376 s 2,13; 1979 c 303 art 1 s 3,4; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 11; 1982 c 523 art 1 s 69; art 40 s 14*

## 290.04 LIABILITY FOR TAX.

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

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

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

## 290.05 EXEMPT INDIVIDUALS, ORGANIZATIONS, ESTATES, TRUSTS.

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

(a) 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) 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 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.

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, 1981.

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:** *1933 c 405 s 5; Ex1937 c 49 s 5; 1939 c 446 s 1,2; 1941 c 109 s 1; 1941 c 550 s 2; 1943 c 643 s 1; 1943 c 656 s 27; 1947 c 635 s 3; 1953 c 647 s 1; 1965 c 596 s 1; 1967 c 671 s 1; 1971 c 769 s 2; 1971 c 802 s 1; 1973 c 123 art 2 s 1 subd 2; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 343 s 2; 1Sp1981 c 4 art 1 s 133; 1982 c 523 art 1 s 6,7; art 40 s 14 (2394-5)*

## 290.06 RATES OF TAX; CREDITS AGAINST TAX.

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

(1) On the first $25,000, for the first taxable year beginning after December 31, 1981 and before January 1, 1983 nine percent and, for taxable years beginning after December 31, 1982, six percent; provided that, in the case of a corporation having taxable net income allocated to this state pursuant to the provisions of section 290.19 or 290.20, the amount of income subject to this rate shall be that proportion of $25,000 which its income allocable to this state bears to its total taxable net income; and

(2) On the remainder, 12 percent.

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

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

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

Subd. 2c. **Schedule of rates for individuals, estates and trusts.** (a) 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, 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 14.

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.

Subd. 2e. **Additional income tax.** In addition to the tax computed pursuant to subdivisions 2c and 2d or subdivision 3d, there is hereby imposed an additional income tax on individuals, estates, and trusts, other than those taxable as corporations. The additional tax shall be computed by applying the following rates to the tax computed pursuant to subdivision 3d or, in the case of an individual who does not qualify for the low income alternative tax and estates and trusts, the tax computed pursuant to subdivisions 2c and 2d and sections 290.032 and 290.091 less the credits allowed by sections 290.06, subdivisions 3e, 3f, 9, 9a, 11 and 14; and 290.081.

(1) For taxable years beginning after December 31, 1981, but before January 1, 1983, seven percent;

(2) For taxable years beginning after December 31, 1982, but before January 1, 1984, 3.5 percent:

On October 1, 1983 the commissioner of finance shall determine the amount of the state's unrestricted general fund balance at the close of the 1982-1983 biennium. If this amount is more than $150,000,000, the commissioner shall reduce the rate of the surtax in effect for taxable years beginning after December 31, 1982 and before January 1, 1984, so that the amount of revenue raised by the surtax results in a fund balance of no more than $150,000,000, provided that the rate so determined shall be rounded upward to the next one-tenth of one percent and no adjustment shall be required if the change in the rate of the surtax would be less than one-tenth of one percent.

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

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

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

Subd. 3c. [Repealed, 1982 c 523 art 1 s 72]

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.

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, 1981, 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.

(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.

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

Subd. 5. [Expired]

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

Subd. 7. [Expired]

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

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

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

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

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

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

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

Subd. 11. **Contributions to political parties and candidates.** In lieu of the 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 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.

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

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

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

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

(a) Expenditures which qualify for the federal renewable energy source credit, pursuant to Section 44C of the Internal Revenue Code of 1954, as amended through December 31, 1981, 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.

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, 1987.

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, 1981. "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, 1981, 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 sections 14.29 to 14.36 to establish this certification procedure.

This subdivision is effective for expenditures made during taxable years beginning after December 31, 1978 and before January 1, 1986.

Subd. 15. **Corporations; credit.** A corporation doing business in Minnesota which:

(1) purchases less than 20 percent of the value of its raw materials from other members of the unitary group;

(2) sells less than 15 percent of the value of its final products to other members of the unitary group;

(3) has total sales in Minnesota of less than 1/10 of one percent of the total sales of the unitary group;

(4) has more than 40 percent of its employees in Minnesota; and

(5) is a separate corporate entity;

shall be granted a credit equal to the difference in the amount of tax computed on a combined report under section 290.34, subdivision 2, and the amount of tax computed for that corporation only. This credit is not refundable. This credit applies only to a corporation if the inclusion of the corporation in a combined report would result in that corporation being liable for a state income tax in excess of four percent of its total sales in Minnesota and if the main manufacturing plant of that corporation is located within the city limits of the county seat of a county that, based on the 1980 federal census, contains between 11,500 and 13,000 people.

**History:** *1933 c 405 s 6; Ex1937 c 49 s 6; 1939 c 446 s 3; 1941 c 550 s 3; 1943 c 656 s 2; 1945 c 604 s 3; 1947 c 635 s 4; 1949 c 642 s 13; 1949 c 734 s 4,5; 1951 c 605 s 1,2; 1951 c 676 s 1; 1953 c 667 s 1,2; 1955 c 84 s 1; 1957 c 847 s 1; Ex1957 c 1 art 1 s 1; Ex1957 c 1 art 2 s 1; Ex1957 c 1 art 7 s 2; Ex1959 c 70 art 3 s 1-5; Ex1961 c 91 art 1 s 1,2; Ex1961 c 91 art 5 s 1,3,4; Ex1961 c 91 art 6 s 1; 1963 c 835 s 1; 1963 c 886 s 1-4; 1965 c 884 art 1 s 1-4; Ex1967 c 32 art 12 s 1, art 14 s 1-5; 1969 c 399 s 25,26; 1969 c 881 s 2-5; 1969 c 1000 s 1; 1971 c 35 s 1; 1971 c 794 s 1,2; Ex1971 c 2 s 1,2; Ex1971 c 31 art 6 s 1; Ex1971 c 31 art 18 s 1-4; 1973 c 22 s 1; 1973 c 582 s 3; 1973 c 650 art 22 s 1; 1974 c 470 s 35; 1974 c 556 s 3; 1975 c 349 s 8,9; 1975 c 355 s 1; 1975 c 437 art 9 s 2; 1976 c 2 s 103; 1977 c 250 s 1; 1977 c 386 s 2; 1977 c 423 art 1 s 4,5; 1978 c 463 s 106; 1978 c 721 art 2 s 1; art 3 s 1; art 4 s 1; art 7 s 1; art 8 s 1; art 9 s 1; 1979 c 59 s 7; 1979 c 303 art 1 s 5-10; art 4 s 1-3; art 5 s 1-3; art 10 s 6; 1980 c 509 s 113,114; 1980 c 607 art 1 s 3-7,32; art 9 s 1; 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; 3Sp1981 c 2 art 3 s 3,4; 1982 c 424 s 130; 1982 c 523 art 1 s 8,9; art 10 s 1; art 29 s 1; art 40 s 14 (2394-6)*

**290.0601** [Repealed, 1977 c 423 art 2 s 20]
**290.0602** [Repealed, 1977 c 423 art 2 s 20]
**290.0603** [Repealed, 1977 c 423 art 2 s 20]
**290.0604** [Repealed, 1977 c 423 art 2 s 20]
**290.0605** [Repealed, 1977 c 423 art 2 s 20]
**290.0606** [Repealed, 1977 c 423 art 2 s 20]
**290.0607** [Repealed, 1973 c 650 art 16 s 4]
**290.0608** [Repealed, 1977 c 423 art 2 s 20]
**290.0609** [Repealed, 1977 c 423 art 2 s 20]
**290.061** MS 1953 [Repealed, Ex1957 c 1 art 1 s 2]
**290.061** MS 1976 [Repealed, 1977 c 423 art 2 s 20]
**290.0611** [Repealed, 1977 c 423 art 2 s 20]
**290.0612** [Repealed, 1977 c 423 art 2 s 20]
**290.0613** [Repealed, Ex1971 c 31 art 8 s 8]
**290.0614** [Repealed, 1977 c 423 art 2 s 20]
**290.0615** [Repealed, 1977 c 423 art 2 s 20]
**290.0616** [Repealed, 1977 c 423 art 2 s 20]
**290.0617** [Repealed, 1973 c 650 art 16 s 4]
**290.0618** [Repealed, 1977 c 423 art 2 s 20]
**290.062** [Expired]
**290.063** [Expired]
**290.064** [Expired]
**290.065** [Repealed, 1969 c 399 s 51]
**290.066** [Repealed, 1977 c 423 art 2 s 20]

## 290.067 DEPENDENT CARE CREDIT.

Subdivision 1. **Amount of credit.** A taxpayer may take as a credit against the tax due from him and his spouse, if any, under this chapter an amount equal to the dependent care credit for which he is eligible pursuant to the provisions of section 44A of the Internal Revenue Code of 1954, as amended through December 31, 1981, except that the applicable percentage of the employment-related expenses shall be 20 percent and subject to the other limitations provided in subdivision 2.

Subd. 2. **Limitations.** The credit for expenses incurred for the care of each dependent shall not exceed $400 in any taxable year, and the total credit for all dependents of a claimant shall not exceed $800 in a taxable year. The total credit shall be reduced by five percent of the amount by which the combined federal adjusted gross income, 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, 1981, 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.

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

Subd. 4. **Right to file claim.** The right to file a claim under this section shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. When a claimant dies after having filed a timely claim the amount thereof shall be

disbursed to another member of the household as determined by the commissioner of revenue. If the claimant was the only member of his household, the claim may be paid to his personal representative, but if neither is appointed and qualified within two years of the filing of the claim, the amount of the claim shall escheat to the state.

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

**History:** *1977 c 423 art 7 s 1,2; 1979 c 303 art 1 s 11; 1980 c 607 art 1 s 11,12; 1981 c 343 s 4; 1Sp1981 c 2 s 22; 1982 c 523 art 40 s 3,14*

## 290.068 CREDIT FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.

Subdivision 1. **Credit allowed.** In addition to the deduction provided in section 290.09, a credit shall be allowed against the tax imposed by this chapter for the taxable year equal to

(a) 12.5 percent of the first $2 million of the excess (if any) of

(1) the qualified research expenses for the taxable year, over

(2) the base period research expenses; and

(b) 6.25 percent on all of such excess expenses over $2 million.

Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings given.

(a) "Qualified research expenses" means (i) qualified research expenses as defined in section 44F(b) and (e) of the Internal Revenue Code, except it shall not include expenses incurred for basic research conducted outside the state of Minnesota pursuant to section 44F(e); or (ii) contributions to a nonprofit corporation established and operated pursuant to the provisions of chapter 317 for the purpose of promoting the establishment and expansion of business in this state, provided the contributions are invested by the nonprofit corporation for the purpose of providing funds for small, technologically innovative enterprises in Minnesota during the early stages of their development.

(b) "Qualified research" means qualified research as defined in section 44F(d) of the Internal Revenue Code, except that the term shall not include qualified research conducted outside the state of Minnesota.

(c) "Base period research expenses" means base period research expenses as defined in section 44F(c) of the Internal Revenue Code, except that "December 31, 1981" shall be substituted for "June 30, 1981" in subparagraph (B) of paragraph (2) and the definitions contained in clauses (a) and (b) shall apply.

(d) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended through December 31, 1981.

Subd. 3. **Limitation; carryback and carryover.** (a)(1) The credit for the taxable year shall not exceed the liability for tax. "Liability for tax" for purposes of this section means the tax imposed under this chapter for the taxable year reduced by the sum of the credits allowed under section 290.06, except the credit allowed under section 290.06, subdivision 13.

(2) In the case of an individual who

(A) owns an interest in an unincorporated business,

(B) is a partner in a partnership,

(C) is a beneficiary of an estate or trust, or

(D) is a shareholder in a small business corporation, having a valid election in effect under section 1372 of the Internal Revenue Code,

the credit allowed for the taxable year shall not exceed the lesser of the amount determined under clause (1) for the taxable year or an amount (separately computed with respect to such person's interest in the trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in the trade or business or entity.

(b) If the amount of the credit determined under this section for any taxable year exceeds the limitation under clause (a), the excess shall be a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the 15 succeeding taxable years. The entire amount of the excess unused credit for the taxable year shall be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. The amount of the unused credit which may be added under this clause shall not exceed the taxpayer's liability for tax less the research credit for the taxable year.

For the purposes of sections 290.46 and 290.50, if the claim for refund relates to an overpayment attributable to a research and experimental expenditure credit 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 in which the research and experimental expenditure credit arises which results in the carryback. In any case in which a taxpayer is entitled to a refund in a carryback year due to the carryback of a research and experimental expenditure credit, interest shall be computed only from the end of the taxable year in which the credit arises.

Subd. 4. **Small business corporations; partnerships.** In the case of small business corporations, having a valid election in effect, under section 1372 of the Internal Revenue Code of 1954, estates and trusts, and partnerships, the credit shall be allocated in the same manner provided by section 44F(f)(2) of the Internal Revenue Code.

Subd. 5. **Adjustments; acquisitions and dispositions.** If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period shall be adjusted in the same manner provided by section 44F(f)(3) of the Internal Revenue Code, except that "December 31, 1980" shall be substituted for "June 30, 1980."

**History:** *3Sp1981 c 2 art 3 s 6; 1982 c 523 art 1 s 70; art 9 s 1*

## 290.07 NET INCOME; COMPUTATION, ACCOUNTING PERIOD.

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

A taxpayer may change his accounting period only with the consent of the commissioner. In case of any such change, he shall pay a tax for the period not included in either his former or newly adopted taxable year, computed as provided in section 290.32.

Subd. 2. **Accounting methods.** Except as specifically provided to the contrary by this chapter, net income and taxable net income shall be computed in accordance with the method of accounting regularly employed in keeping the

taxpayer's books. If no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this chapter, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly and fairly reflect income and the income taxable under this chapter.

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

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

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

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

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

tions 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.

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

If the decrease in tax ascertained under part (e) (2) of the preceding paragraph exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year. The preceding paragraph does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments made by a regulated public utility (as defined in section 7701(a)(33) of the Internal Revenue Code of 1954 as amended through December 31, 1981 without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the government, political subdivision, agency, or instrumentality referred to in such section.

Subd. 5. **Property sold on installment plan.** 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, 1981.

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

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

Subd. 7. **Deductions, credits; time for taking.** The deductions and credits provided for in this chapter shall be taken for a taxable year in which "paid or accrued" or "paid and incurred," dependent upon the method of accounting upon

the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under section 290.31) accrued as deductions and credits only by reason of the death of the taxpayer shall not be allowed in computing net income for the period in which falls the date of the taxpayer's death.

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

**History:** *1933 c 405 s 9; 1939 c 446 s 4; 1945 c 604 s 4,5; 1947 c 635 s 5; 1955 c 426 s 1; 1957 c 621 s 10; 1957 c 772 s 1; 1961 c 507 s 1; 1965 c 488 s 1; 1965 c 489 s 1; 1971 c 761 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 419 s 3; 1980 c 607 art 1 s 32; 1981 c 60 s 3,27; 1981 c 178 s 17; 1982 c 523 art 40 s 14 (2394-9)*

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

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

Subd. 2. **Long term projects.** (1) If an individual or partnership engages in an employment as defined in paragraph (2), and the employment covers a period of 36 months or more (from the beginning to the completion of such employment), and the gross compensation from the employment received or accrued in the taxable year of the individual or partnership is not less than 80 percent of the total compensation from such employment, then the tax attributable to any part of the compensation which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period preceding the date of receipt or accrual.

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

(3) An individual who is a member of a partnership receiving or accruing compensation from an employment of the type described in paragraph (1) shall be entitled to the benefits of that paragraph only if the individual has been a member of the partnership continuously for a period of 36 months or the period of the employment immediately preceding the receipt or accrual. In such a case the tax attributable to the part of the compensation which is includible in the gross income of the individual shall not be greater than the aggregate of the taxes which would have been attributable to that part had it been included in the gross income of the individual ratably over the period in which it was earned or the period during which the individual continuously was a member of the partnership, whichever period is the shorter. For purposes of this paragraph, a member of a

partnership shall be deemed to have been a member of the partnership for any period, ending immediately prior to becoming such a member, in which he was an employee of such partnership, if during the taxable year he received or accrued compensation attributable to employment by the partnership during such period.

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.

Subd. 4. **Back pay.** If the amount of the back pay received or accrued by an individual during the taxable year exceeds 15 percent of the gross income of the individual for such year, the part of the tax attributable to the inclusion of such back pay in gross income for the taxable year shall not be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the taxable years to which such portions are respectively attributable, as determined under the regulations prescribed by the commissioner.

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

Subd. 5. **Bad debts.** Income attributable to the recovery during the year of a bad debt, on account of which a deduction or credit was allowed for a prior

taxable year, shall be included in gross income only to the extent that the deduction or credit resulted in a reduction of the tax imposed by this chapter for such prior year.

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

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

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

**History:** *1943 c 656 s 3; 1945 c 413 s 1,2; 1955 c 30 s 1; 1961 c 260 s 1; 1980 c 419 s 4; 1981 c 178 s 18,19*

**290.072** [Repealed, 1975 c 349 s 31]

## 290.073 GROSS INCOME, COMMODITY CREDIT LOANS.

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

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

**290.074** [Repealed, 1947 c 635 s 21]

## 290.075 RENEGOTIATED WAR CONTRACTS.

Any corporate 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 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, 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:** *1943 c 656 s 26; 1945 c 604 s 6; 1951 c 578 s 1; 1981 c 178 s 20; 1982 c 523 art 1 s 10*

**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, 1981.

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, 1981 who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

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

required under (B) shall be deemed sufficient if in an amount equivalent to the tax which would be due if the method provided in (A) were followed.

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

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

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

(A) The term "estate tax" means the tax imposed on the estate of the decedent or any prior decedent under the Internal Revenue Code of 1954, as amended through December 31, 1981 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 section 421(c)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1981, 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

(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:** *1945 c 604 s 17; 1957 c 761 s 1; 1961 c 478 s 1; 1971 c 769 s 2; 1973 c 582 s 3; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1980 c 419 s 6; 1980 c 439 s 2; 1980 c 607 art 1 s 32; 1981 c 60 s 4,27; 1981 c 178 s 21,22; 1982 c 424 s 111; 1982 c 523 art 40 s 14*

**290.078** [Repealed, 1965 c 677 s 2]

**290.0781** [Repealed, 1982 c 523 art 1 s 72]

## 290.079 INTEREST ON CERTAIN DEFERRED PAYMENTS.

Subdivision 1. **Amount constituting interest.** For purposes of this chapter, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which section 483 of the Internal Revenue Code of 1954, as amended through December 31, 1981, applies.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

Subd. 3. [Repealed, 1982 c 523 art 1 s 72]

Subd. 4. [Repealed, 1982 c 523 art 1 s 72]

Subd. 5. [Repealed, 1982 c 523 art 1 s 72]

Subd. 6. [Repealed, 1982 c 523 art 1 s 72]

**History:** *1965 c 645 s 1; 1981 c 178 s 23; 1982 c 523 art 1 s 11*

## 290.08 EXEMPTIONS FROM GROSS INCOME.

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

Subd. 2. **Gifts and inheritances.** The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or

inheritance of a right to receive income shall also be included in gross income. Amounts paid, credited, or to be distributed at intervals, under the terms of the gift, devise or inheritance, shall be included in gross income of the recipient to the extent paid, credited, or to be distributed out of income;

Subd. 3. **Certain death benefits.** The exclusion of certain death benefits shall be determined in accordance with the provisions of section 101 of the Internal Revenue Code of 1954 as amended through December 31, 1981.

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

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

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

Subd. 7. [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 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.

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

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

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

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

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

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

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

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

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

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

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

Subd. 20. **Income from discharge of indebtedness.** 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, 1981.

Subd. 21. [Repealed, 1982 c 523 art 1 s 72]

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

Subd. 23. **Commuter van use.** Gross income shall not include benefits derived by a driver from the personal use of a commuter van owned by a person other than the driver. For purposes of this subdivision, commuter van shall mean a motor vehicle having a capacity of seven to 16 persons which is used principally to provide prearranged transportation of persons to or from their place of employment or to or from a transit stop authorized by a local transit authority which vehicle is to be operated by a person who does not drive the vehicle for his

principal occupation but is driving it only to or from his principal place of employment, to or from a transit stop authorized by a local transit commission, or for personal use when authorized by the owner. The exemption shall not apply to monetary compensation received by a person in return for his services in driving the van.

Subd. 24. **Family farm security loan interest.** Gross income shall not include interest, including payment adjustment to the extent that it is applied to interest, earned by the seller of property on a family farm security loan executed before January 1, 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 excludable 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 excludable 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 excludable 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 manufactured 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.

(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 excludable 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.

(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:** *1933 c 405 s 12; Ex1937 c 49 s 7; 1939 c 446 s 5,6; 1941 c 18 s 4; 1941 c 550 s 5,6; 1943 c 656 s 5,21; 1945 c 449 s 1; 1945 c 604 s 8; 1947 c 635 s 6; 1949 c 734 s 6; 1951 c 608 s 1; 1955 c 22 s 1; 1955 c 27 s 1; 1955 c 190 s 1; 1957 c 889 s 1; Ex1959 c 70 art 3 s 6; 1961 c 213 art 4 s 2; 1961 c 463 s 1; 1961 c 501 s 2,14; 1965 c 51 s 58; 1967 c 900 s 1; 1967 c 901 s 1; 1969 c 575 s 2; 1971 c 24 s 27,28; 1971 c 769 s 2; 1973 c 459 s 1; 1973 c 711 s 3; 1974 c 145 s 1; 1975 c 349 s 29; 1975 c 359 s 23; 1976 c 233 s 11; 1977 c 376 s 13; 1977 c 423 art 1 s 6; 1977 c 429 s 63; 1978 c 763 s 3; 1978 c 772 s 62; 1980 c 419 s 7-9; 1980 c 607 art 1 s 8; 1981 c 60 s 5,6,27; 1981 c 178 s 24; 1981 c 261 s 21; 1981 c 365 s 9; 1Sp1981 c 1 art 9 s 6; 1982 c 523 art 40 s 14 (2394-12)*

**290.0801** [Repealed, 1975 c 349 s 31]

## 290.081 INCOME OF NONRESIDENTS, RECIPROCITY.

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

(b) Whenever a nonresident taxpayer has become liable for income taxes to the state where he resides upon his net income for the taxable year derived from the performance of personal or professional services within this state and subject to taxation under this chapter, there shall be allowed as a credit against the amount of income tax payable by him under this chapter, such proportion of the tax so paid by him to the state where he resides as his gross income subject to taxation under this chapter bears to his entire gross income upon which the tax so paid to such other state was imposed; provided, that such credit shall be allowed only if the laws of such state grant a substantially similar credit to residents of this state subject to income tax under such laws, or

(c) If any taxpayer who is a resident of this state, or a domestic corporation or corporation commercially domiciled therein, has become liable for taxes on or measured by net income to another state or a province or territory of Canada upon, if the taxpayer is an individual, or if the taxpayer is an athletic team and all of the team's income is apportioned to Minnesota, 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.

(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.

For purposes of clause (c), where a Minnesota resident reported an item of income to Minnesota and is assessed tax in another state or a province or territory of Canada on that same item of income after the Minnesota statute of limitations has expired, the taxpayer shall be allowed to receive a credit for that year based on clause (c), notwithstanding the provisions of sections 290.49, 290.50, and 290.56. For purposes of the preceding sentence, the burden of proof shall be on the taxpayer to show that he is entitled to a credit.

(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:** *1941 c 429; 1943 c 656 s 19; 1959 c 10 s 1; 1961 c 213 art 3 s 1; 1967 c 42 s 1; 1973 c 582 s 3; 1973 c 650 art 6 s 1; 1977 c 387 s 1; 1977 c 423 art 1 s 7; 1979 c 303 art 1 s 13; 1980 c 607 art 1 s 9; 1981 c 178 s 25; 1982 c 523 art 1 s 12; art 28 s 1*

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

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

**History:** *1967 c 671 s 2*

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

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:** *1941 c 18 s 2; 1981 c 178 s 26*

**290.086** [Repealed, 1980 c 419 s 46]
**290.087** [Repealed, 1980 c 419 s 46]

## 290.09 DEDUCTIONS FROM GROSS INCOME.

Subdivision 1. **Limitations.** (a) 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, subdivisions 20 to 20f, shall not be again deducted under this section.

(b) 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, 1981.

(c) Interest and depreciation attributable to rental residential property may not be deducted under this section if the property does not comply with the requirements of Laws 1982, Chapter 523, Article 7, Section 3.

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) Actual campaign expenditures in an amount not to exceed one-third of the salary of the office sought, for the year the election is held, by the candidate, but no less than $100, not reimbursed, which have been personally paid by a candidate for public office;

(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, 1981, shall be applicable in determining the availability of any deduction under this subdivision.

(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, 1981.

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, subdivisions 20 to 20f 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, 1981 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, 1981 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, 1981. 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, 1981 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, 1981. Interest and carrying costs in the case of straddles shall be treated as provided in section 263(g) of the Internal Revenue Code of 1954, as amended through December 31, 1981.

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, 1981. If the taxpayer's foreign tax credit consists of both foreign taxes deemed paid and foreign taxes actually paid or withheld, it will be conclusively presumed that foreign taxes deemed paid were first used by the taxpayer in its foreign tax credit. Minnesota

gross income shall include the amount of foreign tax paid which had been allowed as a deduction in a previous year, provided such foreign tax is later allowed as a credit against federal income tax.

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.

Property taxes shall be allowed as a deduction to the same taxpayer and in the same manner as provided in section 164 of the Internal Revenue Code of 1954, as amended through December 31, 1981, notwithstanding the provisions of section 272.31.

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 this chapter 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, 1981. 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

(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, 1981 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 this chapter 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, 1981 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, 1981, 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.

(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) For purposes of this subdivision "reasonable allowance" shall include the accelerated cost recovery system provisions of section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1981, except as provided in this subdivision. In the case of recovery property within the meaning of section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1981, the term "reasonable allowance" as used in clause (a) shall mean 85 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 for property placed in service after December 31, 1980 and for taxable years beginning before January 1, 1982.

For taxable years beginning after December 31, 1981 the term reasonable allowance as used in clause (a) shall mean the following percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1981:

(1) For 3, 5 and 10 year property and for 15 year public utility property the allowable percentage is 83 percent and 80 percent for taxable years beginning after December 31, 1982.

(2) For 15 year real property the allowable percentage is 60 percent.

For property placed in service after December 31, 1980 the term "reasonable allowance" as used in clause (a) shall mean 100 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 where the taxpayer elects to use the straight line method provided in section 168(b)(3) or a method provided in section 168(e)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1981. For property placed in service after December 31, 1980 and for which the full amount of the deduction allowed under section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1981 has been allowed, the remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

(1) 3 year property - 1 year.

(2) 5 year property - 2 years.

(3) 10 year property - 5 years.

(4) All 15 year property - 7 years.

When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to the limitations provided in this clause can be written off as provided in the preceding sentence.

The modification provided in this clause shall apply before applying a limitation on farm losses as contained in subdivision 29.

(d) 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.

(e) 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.

(f) In the absence of an agreement under clause (e) 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).

(g) 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 this chapter for the purpose of determining the gain on the sale or other disposition of such property.

(B) **First year depreciation.** The term "reasonable allowance" as used in this subdivision may, at the election of the taxpayer, include an amount as provided under section 179 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

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

(b) In the case of copper, nickel, copper-nickel listed in subsection (b) of section 613 of the Internal Revenue Code of 1954, as amended through December 31, 1981 the allowance for depletion shall be determined in accordance with the provisions of sections 613 and 614 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

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

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

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

Subd. 10. **Medical expenses.** Payments (not compensated for by insurance or otherwise) for 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, 1981.

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

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

Subd. 13. **Amortization of bond premiums.** An allowance for amortization of bond premiums in accordance with the provisions of section 171 of the Internal Revenue Code of 1954, as amended through December 31, 1981 adapted to the provisions of this chapter under regulations issued by the commissioner, but only to the extent that such deduction has not been allowed under any other section of this chapter.

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

Subd. 15. **Standard deduction.** In lieu of all deductions provided for in this chapter, 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.

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

Subd. 16. **Circulation expenditures.** Notwithstanding the provisions of section 290.10(2), circulation expenditures shall be treated in the same manner as the taxpayer has elected under the provisions of section 173 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

Subd. 17. **Taxes and interest paid to cooperative apartment corporation.** In the case of a tenant-stockholder, there shall be allowed as a deduction amounts allowed under the provisions of section 216 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

Subd. 17a. [Repealed, 1982 c 523 art 1 s 72]

Subd. 18. **Research and experimental expenditures.** 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, 1981.

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, 1981.

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

Subd. 21. **Soil and water conservation expenditures.** Expenditures which are paid or incurred during the taxable year by a taxpayer engaged in the business of farming for the purpose of soil or water conservation shall be treated in the same manner as provided in section 175 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

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

Subd. 24. [Repealed, 1982 c 523 art 1 s 72]

Subd. 25. **Exploration and development expenditures.** (a) Expenditures paid or incurred during the taxable year for the purposes of ascertaining the existence, location, extent, or quality of any deposit of copper, nickel or copper-nickel ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit shall be allowed as a deduction in computing taxable income in accordance with and to the extent provided in section 617 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

(b) Expenditures paid or incurred during the taxable year for the development of a copper, nickel or copper-nickel mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed shall be allowed as a deduction in computing taxable income in accordance with and to the extent provided in section 616 of the Internal Revenue Code of 1954, as amended through December 31, 1981. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

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

Subd. 27. **Adoption expenses.** The expenses he has incurred during the taxable year arising from his adoption of one or more children, including attorney fees, court costs, social or adoption agency fees, and other necessary costs in connection with an adoption; such total expense, however, shall not exceed $1,250 per child adopted. If under the taxpayer's system of accounting, the expense is deductible in two different taxable years, the total deduction for the two years shall not exceed $1,250 per child.

Subd. 28. **Real estate investment trusts; deductible dividends.** A "real estate investment trust," as defined in section 856 of the Internal Revenue Code of 1954, as amended through December 31, 1981, and to which sections 856 to 860 of the Code apply for the taxable year, may deduct its dividends paid to the extent

permitted by section 857(b) (2) (B) of the Code. Such a trust and its shareholders and beneficiaries shall be subject to all of the provisions of sections 857 and 858 of the Code which are applicable under this chapter, in determining their respective taxable net incomes, provided that the amount determined and available for the alternative tax under section 857(b) (3) (A) (ii) of the Code shall be included in gross income subject to the deduction provided by section 290.16, subdivision 4.

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

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

(c) **Deductions allowed; carryover deductions.** 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 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, 1981, and no deduction shall be allowed for two-earner married couples as provided in section 221 of the Internal Revenue Code of 1954, as amended through December 31, 1981. 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, 1981, 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.

(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:** *1933 c 405 s 13; Ex1937 c 49 s 8,9; 1941 c 550 s 7; 1943 c 656 s 6-8,24,25; 1945 c 604 s 7; 1949 c 734 s 7; 1951 c 421 s 1; 1951 c 679 s 1; 1953 c 667 s 3; 1955 c 29 s 1; 1955 c 31 s 1; 1955 c 85 s 1; 1955 c 90 s 1; 1955 c 94 s 1; 1955 c 192 s 1; 1955 c 420 s 1; 1955 c 428 s 1; 1955 c 692 s 1; 1955 c 741 s 1,2; 1955 c 775 s 2; Ex1959 c 70 art 3 s 7; Ex1959 c 70 art 11 s 1; 1961 c 213 art 4 s 3; 1961 c 501 s 3; 1961 c 502 s 1; 1963 c 355 s 2,4; 1963 c 880 s 1; 1965 c 341 s 1; 1965 c 365 s 1; 1965 c 802 s 1; 1967 c 671 s 3,4; 1967 c 899 s 1; 1967 c 901 s 2; Ex1967 c 32 art 6 s 18; 1969 c 84 s 1; 1969 c 343 s 1; 1969 c 575 s 3; 1971 c 769 s 2; Ex1971 c 31 art 6 s 6; Ex1971 c 31 art 11 s 1; 1973 c 446 s 1; 1973 c 711 s 2,3; 1973 c 737 s 2; 1975 c 284 s 47; 1975 c 349 s 14,15,29; 1975 c 437 art 5 s 1; 1976 c 2 s 105; 1976 c 37 s 1; 1977 c 247 s 4; 1977 c 376 s 4,5,13; 1977 c 386 s 3,4; 1977 c 423 art 1 s 8-10; 1978 c 674 s 31,60; 1978 c 766 s 3; 1978 c 772 s 62; 1979 c 265 s 3; 1979 c 303 art 1 s 12,14; 1980 c 419 s 10-12; 1980 c 512 s 5,7; 1980 c 562 s 3,4; 1980 c 607 art 1 s 10-14,32; 1981 c 60 s 7-10,27; 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; 3Sp1981 c 2 art 3 s 7,8; 1982 c 424 s 112,123; 1982 c 523 art 1 s 13-16,71; art 5 s 2; art 7 s 2; art 40 s 4,5,14 (2394-13)*

## 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, 1981. For purposes of the tax imposed by this section, the following modifications shall be made:

(1) 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.

(2) In the case of a corporate taxpayer, percentage depletion shall not be a preference item.

(3) In the case of a corporate taxpayer, the capital gain preference item shall not include the timber preference income defined in section 57(e)(1) of the Internal Revenue Code.

(4) The preference item of reserves for losses on bad debts shall not include reserves allowable under section 593 of the Internal Revenue Code, but which are not allowable under section 290.09, subdivision 6, clause (c).

(5) In the case of an individual, the preference item of adjusted itemized deductions does not include any deduction for charitable contributions in excess of the limitations contained in section 290.21, subdivision 3, including any carryover amount allowed for federal purposes.

(6) The capital gain preference item shall be reduced where the gain would be modified because some or all of the assets have a higher basis for Minnesota purposes than for federal purposes.

(7) In the case of a nonresident individual, or an estate or trust, with a net operating loss that is a larger amount for Minnesota than for federal, the capital gain preference item shall be reduced to the extent it was reduced in the allowance of the net operating loss.

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.

The tax benefit rule contained in section 58(h) of the Internal Revenue Code is applied to the Minnesota minimum tax only to the extent that it determines if there is a federal minimum tax. No separate tax benefit rule is allowable for the Minnesota minimum tax.

For property placed in service after December 31, 1980, the preference items contained in section 57 (a)(12) of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall not apply.

**History:** *1977 c 423 art 1 s 14; 1978 c 767 s 17; 1979 c 303 art 1 s 15; 1980 c 607 art 1 s 15; 1981 c 60 s 11; 3Sp1981 c 2 art 3 s 9; 1982 c 523 art 1 s 17; art 40 s 6,14*

## 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.

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

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

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

(b) The entire amount of the net operating loss for any taxable year shall be carried to the earliest of the taxable years to which, by reason of subdivision 3, clause (a) or (d), such loss may be carried. The portion of such loss which shall be

carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable net income, adjusted by the modifications specified in subdivision 4, for each of the prior taxable years to which such loss may be carried.

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

(d) Where a corporation files a combined report which reflects the entire unitary business as provided in section 290.34, subdivision 2, the corporation shall not be allowed a net operating loss carryback to a year in which it did not file a combined report. The number of taxable years for which a net operating loss carryover is allowed shall be increased by the number of taxable years for which a net operating loss carryback is not allowed under this clause.

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

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

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

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

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

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

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

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

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

(1) The amount of the net operating loss;

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

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

(4) The unpaid amount of such tax;

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

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

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

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

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

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

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

Subd. 9. **Special period of limitation with respect to net operating loss carrybacks.** For the purposes of sections 290.46 and 290.50 if the claim for refund relates to an overpayment attributable to a net operating loss carryback under this section or as the result in the case of an individual of an adjustment of "federal adjusted gross income" because of the carryback under section 172 of the Internal Revenue Code of 1954, as amended through December 31, 1981 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.

Subd. 10. **Product liability loss carryback.** In the case of a taxpayer which has a product liability loss, as defined in section 172(i) of the Internal Revenue Code of 1954 as amended through December 31, 1981, for a taxable year beginning after September 30, 1979 (referred to as "loss year"), the product liability loss shall be a net operating loss carryback to each of the ten taxable years preceding the loss year.

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 contained in federal adjusted gross income according to the provisions of section 290.01, subdivision 20c.

(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 20b, clauses (2) and (4).

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

(8) The modification for accelerated cost recovery system depreciation as provided in section 290.01, subdivision 28.

(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, 1981 (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 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:** *1945 c 604 s 28; 1957 c 769 s 2; Ex1957 c 1 art 6 s 2; Ex1959 c 70 art 3 s 8; 1961 c 259 s 1,2; 1963 c 355 s 5-7; 1965 c 402 s 1,2; 1967 c 597 s 1-3; 1971 c 769 s 2; 1973 c 74 s 1-4; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1979 c 303 art 1 s 16; 1980 c 419 s 13,14; 1980 c 607 art 1 s 16,17,32; 1981 c 60 s 27; 1981 c 178 s 38; 1981 c 343 s 6-8; 1982 c 523 art 1 s 18,19; art 29 s 2; art 40 s 7,14*

## 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 related taxpayers as defined and as provided in section 267 of the Internal Revenue Code of 1954, as amended through December 31, 1981;

(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 as provided in section 267(a)(2) and (e) of the Internal Revenue Code of 1954, as amended through December 31, 1981;

(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, 1981.

(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:** *1933 c 405 s 14; Ex1937 c 49 s 11; 1939 c 446 s 7; 1941 c 550 s 8; 1947 c 635 s 7; 1949 c 541 s 2; 1955 c 83 s 1; 1961 c 504 s 1; 1969 c 610 s 1; 1971 c 432 s 1; 1971 c 769 s 2; 1973 c 279 s 1; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 39; 1Sp1981 c 3 s 3; 1982 c 523 art 1 s 20; art 40 s 14 (2394-14)*

## 290.101 DENIAL OF DEDUCTIONS RELATING TO SUBSTANDARD BUILDINGS.

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

Subd. 2. Substandard building means a building which:

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

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

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

Subd. 4. When the period specified in subdivision 2 has expired without compliance the agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in the form and shall contain the particulars of

the noncompliance and shall include the information, as may be prescribed by the commissioner, shall be mailed by certified mail, return receipt requested, to the taxpayer at his last known address, and shall advise the taxpayer:

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

(b) Where an appeal may be filed; and

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

Subd. 5. On or before March 15 of each year, the agency shall notify the commissioner of revenue of all cases of noncompliance in the previous year, and other information which is necessary for the commissioner to carry out his responsibilities as set forth in subdivision 9, on a form prescribed by the commissioner. The notice shall be in the form and include the information as may be prescribed by the commissioner.

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

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

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

Subd. 9. On or before March 15 of each year, the commissioner of revenue shall report to the tax committees of both houses of the legislature information indicating: (a) the number of written notices of violations issued by the agency pursuant to subdivision 2; (b) the number and types of substandard buildings found to be in noncompliance under 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:** *1975 c 226 s 1; 1981 c 178 s 40*

## 290.11 DETERMINATION OF INCOME, INVENTORIES.

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

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

## 290.12 GAIN OR LOSS ON DISPOSITION OF PROPERTY, COMPUTATION.

Subdivision 1. **Measurement.** The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in this chapter 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 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.

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

Subd. 4. **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:** *1933 c 405 s 16; 1945 c 604 s 9; 1953 c 141 s 1; 1955 c 195 s 1; 1957 c 621 s 11; 1961 c 501 s 4; 1961 c 504 s 2; 1965 c 51 s 59; 1975 c 226 s 3; 1981 c 178 s 41-43; 1982 c 523 art 1 s 71*

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

Subdivision 1. **Transactions in which no gain or loss is recognized.** Gain or loss from transactions described in section 1031, 1035, or 1036 of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall be recognized at the time and in the manner, including the basis computation, provided in those sections.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

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

Subd. 4. [Repealed, 1982 c 523 art 1 s 72]

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 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, 1981.

(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, 1981 shall also be treated as qualifying for the purposes of this section.

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

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

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

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

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

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

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

Subd. 10. [Repealed, 1982 c 523 art 1 s 72]

**History:** *1933 c 405 s 17; Ex1937 c 49 s 12; 1945 c 596 s 3; 1951 c 267 s 1; 1953 c 141 s 2; 1955 c 165 s 1; 1955 c 411 s 1; 1955 c 427 s 1; 1957 c 621 s 12-14,16; 1961 c 501 s 5; 1971 c 512 s 1; 1980 c 607 art 1 s 18; 1981 c 178 s 44; 1982 c 523 art 1 s 21; art 40 s 14 (2394-17)*

## 290.131 DISTRIBUTIONS BY CORPORATIONS; EFFECTS ON RECIPIENTS.

Subdivision 1. **Distributions of property.** The effects on recipients of a distribution by a corporation shall be governed by the provisions of sections 301 to 307 of the Internal Revenue Code of 1954, as amended through December 31, 1981. However, in section 301(c)(3)(B) the date January 1, 1933 shall be substituted for March 1, 1913 when determining the amount of a distribution that is not taxable.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

Subd. 3. [Repealed, 1982 c 523 art 1 s 72]

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:** *1957 c 621 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 376 s 13; 1980 c 419 s 15; 1980 c 607 art 1 s 32; 1981 c 60 s 12; 1981 c 178 s 45,46; 1982 c 523 art 1 s 22*

## 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, 1981.

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, 1981. However, when determining earnings and profits in section 312(f) and (g), the date December 31, 1932 shall be substituted for February 28, 1913, and January 1, 1933 shall be substituted for March 1, 1913.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

**History:** *1957 c 621 s 2; 1981 c 60 s 13; 1981 c 178 s 47; 1982 c 523 art 1 s 23*

## 290.133 DEFINITIONS, CONSTRUCTIVE OWNERSHIP OF STOCK.

Subdivision 1. **Dividend defined.** For purposes of this chapter, the definitions provided in sections 316 to 318 of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall apply. However, in section 316 (a)(1), "December 31, 1932" shall be substituted for "February 28, 1913" when determining dividends.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

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

**History:** *1957 c 621 s 3; 1978 c 772 s 62; 1981 c 178 s 48; 1982 c 523 art 1 s 24*

## 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, 1981. 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:** *1957 c 621 s 4; 1981 c 178 s 49; 1982 c 523 art 40 s 14*

## 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, 1981.

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:** *1957 c 621 s 5; 1961 c 501 s 6,7; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 178 s 50; 1982 c 523 art 40 s 14*

**290.136 CORPORATE ORGANIZATIONS AND REORGANIZATIONS.**

Subdivision 1. **Transfer to corporation controlled by transferor.** The provisions of sections 351 to 368 of the Internal Revenue Code of 1954, as amended through December 31, 1981 shall apply to corporate organizations and reorganizations. However, in section 362, the phrase "acquired in a taxable year beginning after December 31, 1956" shall be substituted for "acquired on or after June 22, 1954" when determining the property to which this section applies.

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]

Subd. 8. [Repealed, 1982 c 523 art 1 s 72]

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

**History:** *1957 c 621 s 6; 1961 c 501 s 8; 1965 c 404 s 1; 1969 c 1052 s 1-3; 1981 c 60 s 15; 1982 c 523 art 1 s 25; art 40 s 14*

**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, 1981, shall apply to carryovers in certain corporate acquisitions and special limitations on net operating loss carryovers.

**History:** *1957 c 621 s 8; 1971 c 24 s 29; 1981 c 60 s 16; 1982 c 523 art 40 s 14*

**290.139 BASIS AND ADJUSTMENTS FOR CERTAIN YEARS.**

The basis of property acquired in transactions occurring prior to taxable years beginning after December 31, 1956, and adjustments to such basis occurring prior to taxable years beginning after December 31, 1956, shall be determined in accordance with the income tax law applicable to the years involved.

**History:** *1957 c 621 s 17*

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

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 through December 31, 1981, 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, 1981, 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 substantially identical property was acquired in the place of stocks or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under section 290.09, subdivision 5, the basis in the case of property so acquired shall be the same as that provided in section 1091 of the Internal Revenue Code of 1954, as amended through December 31, 1981.

(6) 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.

(7) 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.

(8) The basis of property subject to the provisions of section 1034 of the Internal Revenue Code of 1954, as amended through December 31, 1981 (relating to the rollover of gain on sale of principal residence) shall be the same as the basis for federal income tax purposes. The basis shall be increased by the amount of gain realized on the sale of a principal residence outside of Minnesota, while a nonresident of this state, which gain was not recognized because of the provisions of section 1034.

**History:** *1933 c 405 s 18; Ex1937 c 49 s 13; 1943 c 656 s 21; 1955 c 191 s 1; 1957 c 301 s 1; 1957 c 621 s 15; 1979 c 303 art 1 s 17; 1980 c 439 s 3; 1980 c 607 art 1 s 19; 1981 c 60 s 27; 1981 c 178 s 51; 1981 c 343 s 9; 1Sp1981 c 4 art 1 s 134; 1982 c 523 art 1 s 26; art 40 s 14 (2394-18)*

## 290.15 GAIN OR LOSS ON DISPOSITION OF PROPERTY, BASIS OF PROPERTY ACQUIRED BEFORE JANUARY 1, 1933.

The basis for determining the gain from the sale or other disposition of property acquired before January 1, 1933, shall be the fair market value thereof on said date except that, if its cost to the taxpayer, adjusted as provided in section 290.12, subdivision 2, for the period prior to January 1, 1933, (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value). The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933, shall be the cost to the taxpayer adjusted as provided in section 290.12, subdivision 2, for the period prior to January 1, 1933. The basis prescribed by section 290.14 for determining gain or loss with respect to property acquired by gift, by gift through an inter vivos transfer in trust, by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purpose of this section.

**History:** *1933 c 405 s 19; Ex1937 c 49 s 14; 1941 c 550 s 9; 1943 c 656 s 9 (2394-19)*

## 290.16 DEPRECIATION, BASIS; GAIN OR LOSS ON DISPOSITION OF PROPERTY, HOW TAKEN INTO ACCOUNT IN COMPUTING NET INCOME.

Subdivision 1. **Basis for depreciation.** The basis upon which exhaustion, wear, tear, obsolescence, or depletion is to be allowed in respect to any property shall be the same as provided in this chapter for the purpose of determining the loss or gain on the sale or other disposition thereof.

Subd. 1a. **Inapplicable to individuals, trusts, estates.** With respect to individuals, trusts and estates, the provisions of this section shall not be applicable and gains and losses shall be reported as provided in section 290.01, subdivisions 20 to 20f.

Subd. 2. [Repealed, 1957 c 769 s 8]

Subd. 3. **Definitions.** As used in this section:

(1) The term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include

(a) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(b) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, or real property used in the trade or business of the taxpayer, or

(c) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in subparagraph (a);

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

Subd. 4. **Deductions for capital gains.** If for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 60 percent of the amount of such excess shall be a deduction from gross income.

Subd. 5. **Limitations of losses.** Losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges.

Subd. 6. **Capital loss carrybacks and carryovers.** (a) In General. If a corporation has a net capital loss for any taxable year (hereafter in this paragraph referred to as the "loss year"), the amount thereof shall be

(1) a capital loss carryback to each of the three taxable years preceding the loss year, but only to the extent

(i) such loss is not attributable to a foreign expropriation capital loss, as defined in section 1212(a) (2) of the Internal Revenue Code of 1954, as amended through December 31, 1981 and

(ii) the carryback of such loss does not increase or produce a net operating loss, as defined in section 290.095, for the taxable year to which it is being carried back; and

(2) a capital loss carryover to each of the five taxable years (ten taxable years to the extent such loss is attributable to a foreign expropriation capital loss) succeeding the loss year,

and shall be treated as a short term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the net capital gains for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the net capital gain for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of clause (1), the net capital gains for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(b) Priority of Application. For purposes of clauses (1) and (2), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

Subd. 7. **Bonds, other evidences of indebtedness.** 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, 1981.

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 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.

Subd. 10. **Building and loan or savings and loan associations.** Property of a building and loan or savings and loan association acquired in liquidation of a real estate mortgage shall be deemed to be property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

Subd. 11. [Repealed, 1957 c 851 s 2]

Subd. 12. **Gains and losses from short sales; 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, 1981.

Subd. 13. **Options to buy or sell; 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, 1981.

Subd. 14. **Lease, distributor's agreement; cancellation.** Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement.

Subd. 15. **Gain from dispositions of certain depreciable property.** For purposes of this subdivision "depreciable property" shall mean "Section 1245 property" as that phrase is defined in Section 1245(a) (3) of the Internal Revenue Code of 1954, as amended through December 31, 1981.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable property" shall be treated in the same manner as is provided by Section 1245 of the Internal Revenue Code of 1954, as amended through December 31, 1981 and regulations adopted pursuant thereto except that the determination shall be made using the basis computed under this chapter.

Subd. 16. **Gain from disposition of certain depreciable realty.** For purposes of this subdivision "depreciable realty" shall mean "Section 1250 realty" as that phrase is defined in Section 1250(c) of the Internal Revenue Code of 1954, as amended through December 31, 1981.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable realty" shall be treated in the same manner as is provided by Section 1250 of the Internal Revenue Code of 1954, as amended through December 31, 1981, and regulations adopted pursuant thereto except that the determination shall be made using the basis computed under this chapter.

**History:** *1933 c 405 s 20; Ex1937 c 49 s 15; 1941 c 550 s 10; 1943 c 656 s 10; 1945 c 596 s 1; 1947 c 635 s 8; 1949 c 332 s 1,2; 1951 c 679 s 2; 1953 c 141 s 3; 1953 c 653 s 1; 1955 c 166 s 1; 1955 c 167 s 1; 1955 c 169 s 1; 1955 c 198 s 1; 1955 c 267 s 1; 1955 c 412 s 1; 1957 c 769 s 3-6,8,9; 1957 c 851 s 1,2; 1961 c 501 s 9-11,13; 1965 c 487 s 1; 1971 c 758 s 1-3; 1971 c 769 s 2; 1973 c 470 s 1; 1973 c 711 s 3; 1975 c 349 s 16,29; 1977 c 376 s 13; 1978 c 772 s 62; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 52-58; 3Sp1981 c 2 art 3 s 10-12; 1982 c 523 art 1 s 71; art 40 s 8,9,14 (2394-20)*

## 290.165 INTEREST ON REVERSE MORTGAGE LOANS; HOW TAKEN INTO ACCOUNT IN COMPUTING NET INCOME.

Irrespective of the accounting basis used for tax computation purposes, any lender as defined in section 47.58, subdivision 1, who enters into a reverse mortgage loan or purchases an obligation representing a reverse mortgage loan may elect to include as part of its yearly earned income any accrued interest

charged to the outstanding loan balance of its borrower pursuant to section 47.58, subdivision 5. This election must be made, if at all, in the first taxable year in which interest is charged by the lender on the outstanding loan balance and, if made, shall be binding on the lender for each subsequent taxable year until the loan is repaid in full. When accrued interest is charged to the outstanding loan balance pursuant to this section it shall be recognized as earned income to the lender on a monthly basis.

**History:** *1979 c 265 s 4*

## 290.17 GROSS INCOME, ALLOCATION TO STATE.

Subdivision 1. **Income of resident individuals.** The gross income of individuals during the period of time when they are residents of Minnesota shall be their gross income as defined in section 290.01, subdivision 20, except that the amount of otherwise deductible losses incurred in connection with income derived from sources outside the state shall be reduced by the sum of the taxpayer's items of tax preference as defined in section 57 of the Internal Revenue Code of 1954, as amended through December 31, 1981, which are attributable to losses incurred in connection with sources of income outside the state.

Subd. 1a. **Subsequent adjustment.** When a loss has been reduced by the amount of tax preference items pursuant to subdivision 1, and the taxpayer subsequently sells or otherwise disposes of an asset in relation to which arose an item of tax preference which caused the reduction of the loss, the taxpayer may increase the basis of the asset by the amount of the tax preference item that was used to reduce the loss. If the asset is a depletable asset, the taxpayer may elect to so increase its basis upon disposition or to reduce the amount of otherwise taxable income subsequently produced by that asset by the amount of the tax preference item.

Subd. 2. **Other taxpayers.** In the case of taxpayers not subject to the provisions of subdivision 1, items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(1) (a) 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.

(b) In the case of an individual who is a nonresident of Minnesota and who is an athlete or entertainer, income from compensation for labor or personal services performed within this state shall be determined in the following manner.

(i) The amount of income to be assigned to Minnesota for an individual who is a nonresident salaried athletic team employee shall be determined by using a fraction in which the denominator contains the total number of days in which the individual is under a duty to perform for the employer, and the numerator is the total number of those days spent in Minnesota. In order to eliminate the need to file state or provincial income tax returns in several states or provinces, Minnesota will exclude from income any income assigned to Minnesota under the provisions of this clause for a nonresident athlete who is employed by an athletic team whose operations are not based in this state if the state or province in which the athletic team is based provides a similar income exclusion. If the state or province in which the athletic team's operations are based does not have an income tax on an individual's personal service income, it will be deemed that that state or province has a similar income exclusion. As used in the preceding sentence, the term "province" means a province of Canada.

(ii) The amount of income to be assigned to Minnesota for an individual who is a nonresident, and who is an athlete not listed in clause (i), or who is an entertainer, for that person's athletic or entertainment performance in Minnesota shall be determined by assigning to this state all income from performances or athletic contests in this state.

(2) Income from the operation of a farm shall be assigned to this state if the farm is located within this state and to other states only if the farm is not located in this state. Income and gains received from tangible property not employed in the business of the recipient of such income or gains, and from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, shall be assigned to this state if such property has a situs within it, and to other states only if it has no situs in this state. Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held, whether in trust, or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state; income or gains from intangible personal property wherever held, whether in trust or otherwise shall be assigned to this state if the recipient of such income or gains is domiciled within this state, or if the grantor of any trust is domiciled within this state and such income or gains would be taxable to such grantor under section 290.28 or 290.29;

(3) Income derived from carrying on a trade or business, including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be assigned to this state if the trade or business is conducted wholly within this state, and to other states if conducted wholly without this state. This provision shall not apply to business income subject to the provisions of clause (1);

(4) When a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business, including income from intangible property employed in such business and including, in the case of a business owned by natural persons, the income imputable to the owner for his services and the use of his property therein, shall be governed, except as otherwise provided in sections 290.35 and 290.36, by the provisions of section 290.19, notwithstanding any provisions of this section to the contrary. This shall not apply to business income subject to the provisions of clause (1), nor shall it apply to income from the operation of a farm which is subject to the provisions of clause (2). 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.

If the trade or business carried on wholly or partly in Minnesota is part of a unitary business, the entire income of that unitary business shall be subject to apportionment under section 290.19. The term "unitary business" shall mean a number of business activities or operations which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group. Unity shall be presumed whenever there is unity of ownership, operation, and use, evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction. Unity of ownership will not be deemed to exist unless the corporation owns more than 50 percent of the voting stock of the other corporation.

The entire income of a unitary business, including all income from each activity, operation or division, shall be subject to apportionment as provided in

section 290.19. None of the income of a unitary business shall be considered as derived from any particular source and none shall be allocated to any particular place except as provided by the applicable apportionment formula.

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, 1981, are not considered income derived from carrying on a trade or business or from performing personal or professional services in Minnesota, and are not taxable under this chapter.

(7) All other items of gross income shall be assigned to the taxpayer's domicile.

**History:** *1933 c 405 s 23; Ex1937 c 49 s 17; 1949 c 734 s 8; 1971 c 152 s 1; 1971 c 730 s 1; 1973 c 650 art 7 s 1; 1977 c 423 art 1 s 11; 1977 c 429 s 63; 1978 c 767 s 18; 1979 c 303 art 1 s 18,19; 1980 c 512 s 6; 1980 c 607 art 1 s 20,21,32; 1981 c 60 s 27; 1981 c 178 s 59; 1Sp1981 c 1 art 9 s 7; 1982 c 523 art 28 s 2; art 40 s 14; 3Sp1981 c 2 art 3 s 13 (2394-23)*

## 290.18 TAXABLE NET INCOME, ADJUSTED GROSS INCOME; COMPUTATION.

Subdivision 1. **Taxable net income.** The taxable net income shall, except insofar as section 290.19 is applicable, be computed by deducting from the gross income assignable to this state under section 290.17 deductions of the kind permitted by section 290.09 in accordance with the following provisions:

(1) Such deductions shall be allowed to the extent that they are connected with and allocable against the production or receipt of such gross income assignable to this state;

(2) That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries and so far as not entering into the computation of the net income assignable to this state under

section 290.19, shall be allowed which the taxpayer's gross income from sources within this state, as determined under section 290.17, subdivision 2, clauses (1), (2), (3), (5), 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. For purposes of the preceding sentence, "federal adjusted gross income" includes 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, 1981.

(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.

(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 20a, clause (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.

Subd. 3. **Furnish information.** No deduction shall be allowed under this section unless the taxpayer, when requested by the commissioner, shall furnish him with information sufficient to enable him to determine the validity and correctness of such deductions.

Subd. 4. **Taxable net income adjustment factor.** For the taxable year beginning after December 31, 1980 and 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.

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 14.

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:** *1933 c 405 s 24; Ex1937 c 49 s 17; 1949 c 734 s 9; 1951 c 609 s 1; 1955 c 170 s 1; 1957 c 769 s 7; 1961 c 213 art 4 s 4; 1961 c 261 s 1; 1963 c 355 s 9; Ex1971 c 31 art 6 s 7; 1980 c 419 s 16; 1981 c 178 s 60,61; 1Sp1981 c 1 art 1 s 4; 1Sp1981 c 3 s 4; 3Sp1981 c 1 art 1 s 4; 1982 c 424 s 130; 1982 c 523 art 1 s 27,28 (2394-23)*

## 290.19 NET INCOME; ALLOCATION TO STATE, METHODS.

Subdivision 1. **Computation, business conducted partly within state; apportionment.** The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deductions of the kind permitted by section 290.09, so far as connected with or allocable against the production or receipt of such income. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores, or of the manufacture of personal property and the sale of said property within and without the state, the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state is of the total sales wherever made;

(b) The percentage which the total tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in this state during the tax period in connection with such trade or business is of the total tangible property, real, personal, or mixed, wherever located, owned or rented and, used by the taxpayer in connection with such trade or business during the tax period; and,

(c) The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total payrolls paid or incurred in connection with such entire trade or business;

(d) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (1) (a), 15 percent of the percentage determined under clause (1) (b), and 15 percent of the percentage determined under clause (1) (c);

(2) (a) In all other cases the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(1) The percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted;

(2) The percentage which the total tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in this state during the tax period in connection with such trade or business is of the total tangible property, real, personal, or mixed, wherever located, owned, or rented, and used by the taxpayer in connection with such trade or business during the tax period; and

(3) The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total payrolls paid or incurred in connection with such entire trade or business;

(4) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (2) (a) (1), 15 percent of the percentage determined under clause (2) (a) (2), and 15 percent of the percentage determined under clause (2) (a) (3);

(b) If the methods prescribed under clause (2) (a) will not properly reflect taxable net income assignable to the state, there may be used, if practicable and if such use will properly and fairly reflect such income, the percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted; or the separate or segregated accounting method; however, for athletic teams when the visiting team does not share in the gate receipts, all of the team's income is apportioned to the state in which the team's operation is based;

(3) The sales, payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or rented and used by the taxpayer during the taxable year in respect of which the

tax is being computed. For purposes of computing the property factor referred to in this section, United States government property which is used by the taxpayer shall be considered as being owned by the taxpayer.

Subd. 1a. **Determination of sales made within this state.** For purposes of this section the following rules shall apply in determining whether or not sales are made within this state.

Sales of tangible personal property are made within this state if the property is delivered or shipped to a purchaser within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point or other conditions of the sale.

Sales made by or through a corporation which is qualified as a domestic international sales corporation under section 992 of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall not be considered to have been made within this state.

Subd. 2. **Application of methods.** The methods prescribed by subdivision 1 shall apply wherever and insofar as the business carried on within this state is an integral part of a business carried on both within and without this state.

Subd. 3. **Application of sections 290.17 and 290.18.** Nothing in this section shall prevent the application of sections 290.17 and 290.18 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without this state.

**History:** *1933 c 405 s 25; 1939 c 446 s 22; 1941 c 550 s 20; 1953 c 668 s 1; 1967 c 671 s 5; 1969 c 9 s 74; 1969 c 978 s 1; 1973 c 650 art 7 s 2,3; 1975 c 348 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1982 c 523 art 1 s 29; art 28 s 3; art 40 s 27 (2394-25)*

## 290.20 NET INCOME; ALLOCATION TO STATE, PETITION FOR OTHER METHODS.

Subdivision 1. The methods prescribed by section 290.19 shall be presumed to determine fairly and correctly the taxpayer's net income allocable to this state. Any taxpayer feeling aggrieved by the application to his case of the methods so prescribed may petition the commissioner for determination of such net income by the use of some other method, including separate accounting. Thereupon, if the commissioner finds that the application of the methods prescribed by section 290.19 will be unjust to the taxpayer, he may allow the use of the methods so petitioned for by the taxpayer, or may determine such net income by other methods if satisfied that such other methods will fairly reflect such net income. A petition within the meaning of this section shall be deemed to have been filed by the taxpayer if the taxpayer in his return uses a method other than the methods prescribed by section 290.19, and if such return shall have attached thereto a statement setting forth the reasons for the use of such other method.

Subd. 2. The methods prescribed by subdivision 1 shall not be applicable wherever and insofar as the taxpayer's business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores.

**History:** *1933 c 405 s 26; Ex1937 c 49 s 29; 1939 c 446 s 23; 1947 c 635 s 9; 1967 c 671 s 6 (2394-26)*

## 290.21 DEDUCTIONS; INDIVIDUALS AND CORPORATIONS.

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. 2. [Repealed, 1980 c 607 art 9 s 2]

Subd. 3. An amount for contribution or gifts made within the taxable year:

(a) to or for the use of the state of Minnesota, or any of its political subdivisions for exclusively public purposes,

(b) to or for the use of any community chest, corporation, organization, trust, fund, association, or foundation located in and carrying on substantially all of its activities within this state, organized and operating exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual,

(c) to a fraternal society, order, or association, operating under the lodge system located in and carrying on substantially all of their activities within this state if such contributions or gifts are to be used exclusively for the purposes specified in subdivision 3(b), or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual,

(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,

(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, 1981;

(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, 1981, a deduction shall be allowed under this subdivision to the extent that a deduction is allowable for federal income tax purposes.

(j) amounts paid to maintain certain students as members of the taxpayer's household shall be allowed as a deduction as provided in section 170(g) of the Internal Revenue Code of 1954, as amended through December 31, 1981. No other deduction shall be allowed under this subdivision for these amounts and the limitations contained in clause (f) shall not apply to these amounts.

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 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.

(d) If dividends received by a corporation that does not have nexus with Minnesota under the provisions of Public Law 86-272 are included as income on the return of an affiliated corporation permitted or required to file a combined report under section 290.34, subdivision 2, then for purposes of this subdivision the determination as to whether the trade or business of the corporation consists principally of the holding of stocks and the collection of income and gains therefrom shall be made with reference to the trade or business of the affiliated corporation having a nexus with Minnesota.

Subd. 5. To each mutual savings bank organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid or credited during the taxable year of its depositors.

Subd. 6. To each regulated investment company, as that term is defined and limited by section 851 of the Internal Revenue Code of 1954, as amended through December 31, 1981 an amount equal to the interest and dividends paid during the taxable year, and to each building and loan and savings and loan association, an amount equal to the dividends paid during the taxable year to its members as members. For the purposes of this paragraph any dividend or portion thereof declared by a regulated investment company after the close of the taxable year and prior to the time prescribed by law for the filing of its return for the taxable year (including the period of any extension of time granted for filing such return) shall, to the extent the company so elects in such return, be treated as having been paid during such taxable year, but only if distribution of such dividend is actually made to shareholders in the 12 month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration.

Subd. 7. [Repealed, 1982 c 523 art 1 s 72]

**History:** *1933 c 405 s 27; Ex1937 c 49 s 18; 1939 c 446 s 8; 1941 c 550 s 21; 1943 c 656 s 28; 1947 c 635 s 10; 1949 c 734 s 10; 1951 c 679 s 3; 1953 c 321 s 1; 1955 c 385 s 2; 1955 c 742 s 1; 1955 c 775 s 1; 1961 c 508 s 1; 1963 c 331 s 1; 1965 c 367 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1974 c 157 s 3; 1975 c 284 s 48; 1975 c 349 s 17,29; 1976 c 2 s 106; 1976 c 334 s 14; 1977 c 376 s 13; 1977 c 386 s 5; 1978 c 463 s 107; 1978 c 766 s 5; 1979 c 303 art 1 s 20; 1980 c 607 art 1 s 32; 1981 c 29 art 7 s 31; 1981 c 60 s 27; 1981 c 178 s 62-66; 3Sp1981 c 2 art 3 s 14; 1982 c 523 art 1 s 30; art 29 s 3; art 40 s 14 (2394-27)*

## 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:** *1933 c 405 s 28; 1939 c 446 s 9; 1981 c 178 s 67 (2394-28)*

## 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, subdivisions 20 to 20f; or

(2) for the last taxable year of the estate or trust deductions (other than the charitable deduction) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the commissioner, to the beneficiaries succeeding to the property of the estate or trust.

Subd. 4. **Net operating loss deduction.** The benefit of the deduction for net operating loss allowed by section 290.095 shall be allowed to estates and trusts under regulations prescribed by the commissioner. The benefit of such deduction shall not be allowed to a common trust fund but shall be allowed to the participants in the common trust fund under regulation prescribed by the commissioner.

Subd. 5. **Distributable net income, income, beneficiary; defined.** (1) For purposes of sections 290.22 through 290.25, 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, 1981 with the following modification:

There shall be included any tax-exempt interest to which section 290.01, subdivision 20b, clause (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, 1981, the amount of the modification shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in 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, 1981.

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, 1981, 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, 1981, shall be applicable to all accumulation distributions made by a trust after December 31, 1976.

Subd. 16. [Repealed, 1980 c 607 art 1 s 33]

**History:** *1939 c 446 s 10; 1941 c 500 s 12; 1943 c 656 s 12; 1945 c 604 s 29; 1957 c 932 s 1; 1973 c 725 s 52; 1977 c 376 s 6; 1979 c 303 art 1 s 21; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 68-71; 1982 c 523 art 1 s 31; art 40 s 14 (2394-28a)*

**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, 1981, 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:** *1939 c 446 s 10; 1957 c 846 s 1; 1965 c 51 s 60; 1973 c 725 s 53; 1981 c 178 s 72; 1982 c 523 art 40 s 14 (2394-28c)*

**290.26 EMPLOYEES' TRUST, ANNUITY PLANS.**

Subdivision 1. [Repealed, 1982 c 523 art 1 s 72]

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, 1981 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, 1981.

Subd. 3. [Repealed, 1982 c 523 art 1 s 72]

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

Subd. 5. [Repealed, 1982 c 523 art 1 s 72]

Subd. 6. **Individual retirement account; exemption.** Any individual retirement account that is exempt from taxation under the provisions of section 408 of

the Internal Revenue Code of 1954, as amended through December 31, 1981, shall also be exempt from taxation under the provisions of this chapter.

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

**History:** *1939 c 446 s 10; 1945 c 604 s 18; 1957 c 766 s 1; 1971 c 769 s 2; 1973 c 582 s 3; 1973 c 711 s 3; 1974 c 157 s 4; 1975 c 349 s 27; 1976 c 2 s 108; 1977 c 376 s 7,13; 1980 c 607 art 1 s 22,32; 1981 c 60 s 17,27; 1981 c 178 s 73-75; 1982 c 523 art 40 s 14 (2394-28d)*

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

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

**290.281 COMMON TRUST FUND.**

Subdivision 1. **Not taxed; defined.** A common trust fund shall not be subject to taxation under this chapter and the definitions provided in and the provisions of section 584 of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall apply.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

Subd. 3. [Repealed, 1982 c 523 art 1 s 72]

Subd. 4. [Repealed, 1982 c 523 art 1 s 72]

Subd. 5. **Return required of bank.** Every bank maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and deductions allowed by this section, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return required to be filed by the bank under section 290.361.

Subd. 6. [Repealed, 1982 c 523 art 1 s 72]

**History:** *1945 c 604 s 14; 1974 c 6 s 2; 1975 c 349 s 30; 1981 c 178 s 76; 1982 c 523 art 1 s 32*

**290.29 TRANSFEREES, FIDUCIARIES; LIABILITY, TIME LIMIT, NOTICE.**

Subdivision 1. **Liability, amounts.** The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter, including all provisions of the chapter for the collection of taxes:

(1) The liability, at law or in equity, of a transferee of property of a taxpayer in respect of the tax, including interest, additional amounts, and additions to the tax provided by law, imposed upon the taxpayer by this chapter;

(2) The liability of a fiduciary under section 290.54 in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

Subd. 2. **Time limit for assessment, collection; generally.** The period of limitation for assessment and collection of any such liability of the transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the taxpayer, and may be collected by action

brought within one year after the expiration of the period of limitation for the commencement of an action against the taxpayer.

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three and one-half years after the expiration of the period of limitation for assessment against the taxpayers and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the preceding transferee, but only if within four years after the expiration of the period of limitation for bringing an action against the taxpayer; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding, and the period of limitation for collection by action shall expire one year after the said liability is assessed.

(3) In the case of the liability of a fiduciary, the tax may be assessed not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later, and may be collected by action brought within one year after assessment.

Subd. 3. **Time limit for assessment where taxpayer deceased, corporate existence terminated; notice of liability.** For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

In the absence of notice to the commissioner under section 290.30 of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purpose of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

**History:** *1933 c 405 s 29; 1939 c 446 s 11; 1943 c 656 s 13 (2394-29)*

## 290.30 FIDUCIARIES, DUTY TO PAY TAX.

Upon notice to the commissioner that any person is acting in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter, except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer, until notice is given that the fiduciary capacity has terminated.

Upon notice to the commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 290.29, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section, except that the liability shall be collected from the estate of such person, until notice is given that the fiduciary capacity has terminated.

Notice under this section shall be given in accordance with regulations prescribed by the commissioner.

**History:** *1939 c 446 s 12 (2394-29a)*

## 290.31 PARTNERSHIPS; INDIVIDUAL LIABILITY OF PARTNERS.

Subdivision 1. **Partners, not partnership, subject to tax.** A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

Subd. 2. **Income and credits of partner.** (1) In determining his income tax, each partner shall take into account separately his distributive share of the partnership's

(a) gains and losses from sales or exchanges of capital assets held for not more than 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 shall not be allowed to the partnership:

(a) the deduction for taxes provided in section 290.09, subdivision 4 with respect to taxes, described in section 901 of the Internal Revenue Code of 1954, as amended through December 31, 1981, paid or accrued to foreign countries and to possessions of the United States,

(b) the deduction for charitable contributions provided in section 290.21, subdivision 3,

(c) the net operating loss deduction provided in section 290.095,

(d) the additional itemized deductions for individuals provided in section 290.09, subdivisions 10 and 17, and,

(e) the deduction for depletion under section 290.09, subdivision 8 with respect to oil and gas wells.

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, 1981.

Subd. 4. **Partner's distributive share.** The provisions of sections 704, 706 to 741, and 743 to 761 of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall apply to partners and partnerships.

Subd. 5. **Determination of basis of partner's interest.** The adjusted basis of a partner's interest in a partnership shall, except as provided in the last paragraph of this subdivision, be the basis of such interest determined under sections 722 or 742 of the Internal Revenue Code of 1954, as amended through December 31, 1981, relating to contributions to a partnership or transfers of partnership interests

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of

(a) net income of the partnership as determined under subdivision 3(1) and (2),

(b) income of the partnership exempt from tax under this chapter,

(c) the excess of the deductions for depletion over the basis of the property subject to depletion, and

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 of the Internal Revenue Code of 1954, as amended through December 31, 1981, and by the sum of his distributive share for the taxable year and prior taxable years of

(a) losses of the partnership, and

(b) expenditures of the partnership not deductible in computing its taxable net income and not properly chargeable to capital account, and

(3) decreased, but not below zero, by the amount of the partner's deduction for depletion under section 611 of the Internal Revenue Code of 1954, as amended through December 31, 1981, with respect to oil and gas wells. For corporate partners, the deduction for depletion with respect to oil and gas wells shall be computed as provided in section 290.09, subdivision 8.

The commissioner shall prescribe by rule the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

Subd. 6. [Repealed, 1982 c 523 art 1 s 72]

Subd. 7. [Repealed, 1982 c 523 art 1 s 72]

Subd. 8. [Repealed, 1982 c 523 art 1 s 72]

Subd. 8a. [Repealed, 1982 c 523 art 1 s 72]

Subd. 9. [Repealed, 1982 c 523 art 1 s 72]

Subd. 10. [Repealed, 1982 c 523 art 1 s 72]

Subd. 11. [Repealed, 1982 c 523 art 1 s 72]

Subd. 12. [Repealed, 1982 c 523 art 1 s 72]

Subd. 13. [Repealed, 1982 c 523 art 1 s 72]

Subd. 14. [Repealed, 1982 c 523 art 1 s 72]

Subd. 15. [Repealed, 1982 c 523 art 1 s 72]

Subd. 16. [Repealed, 1982 c 523 art 1 s 72]

Subd. 17. [Repealed, 1982 c 523 art 1 s 72]

Subd. 18. [Repealed, 1982 c 523 art 1 s 72]

Subd. 19. **Basis of transferee partner's interest.** The basis of an interest in a partnership acquired other than by contribution shall be determined under this chapter.

Subd. 20. [Repealed, 1982 c 523 art 1 s 72]

Subd. 21. [Repealed, 1982 c 523 art 1 s 72]

Subd. 22. [Repealed, 1982 c 523 art 1 s 72]

Subd. 23. [Repealed, 1982 c 523 art 1 s 72]

Subd. 24. [Repealed, 1982 c 523 art 1 s 72]

Subd. 25. [Repealed, 1982 c 523 art 1 s 72]

Subd. 26. [Repealed, 1982 c 523 art 1 s 72]

Subd. 27. **Allocation of partnership income to state.** The taxable net income of the partnership shall be assigned to this state under sections 290.17 to 290.20.

Subd. 28. [Repealed, 1980 c 419 s 46]

**History:** *1933 c 405 s 30; Ex1937 c 49 s 20; 1939 c 446 s 13; 1945 c 596 s 2; 1945 c 604 s 30; 1947 c 635 s 11; 1955 c 406 s 1; 1981 c 60 s 18; 1981 c 178 s 77-85; 1982 c 523 art 1 s 33-36; art 40 s 14 (2394-30)*

## 290.311 PARTNERSHIP GROSS INCOME.

Subdivision 1. **Resident partners.** (a) Partner's modifications. In determining gross income and Minnesota taxable income of a resident partner, any modification described in section 290.01, subdivisions 20 to 20f, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates.

(b) Character of items. Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this section which it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Minnesota tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the effect of such provision is the avoidance or evasion of tax under this section, the partner's distributive share of such item, and any modifications required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Subd. 2. **Nonresident partners.** (a) Portion derived from Minnesota sources. In determining Minnesota adjusted gross income and Minnesota taxable income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with Minnesota sources of such partner's distributive share of items of partnership income, gain, loss or deduction for federal income tax purposes. The portion of such distributive share of each item which is derived from or connected with Minnesota sources, shall be determined under regulations of the commissioner.

(b) Partner's modifications. Any modification described in section 290.01, subdivisions 20 to 20f, which relates to an item of partnership income, gain, loss or deduction, shall be made to the extent of the portion derived from or connected with Minnesota sources of the item to which the modification relates.

(c) Alternate methods. The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of the distributive share of partnership items derived from or connected with Minnesota sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as it may require.

**History:** *Ex1961 c 51 s 2; 1965 c 51 s 61; 1980 c 419 s 18,19*

## 290.32 TAXES FOR PART OF YEAR, COMPUTATION.

When under this chapter a taxpayer is permitted or required to make a return for a fractional part of a year, the tax shall be computed in the same manner as if such fractional part of a year were an entire year, except:

(1) When a taxpayer is permitted to change the basis for reporting his income from a fiscal to a calendar year, he shall make a separate return for the period between the close of his last fiscal year and the following December thirty-first; if the change is from a calendar to a fiscal year, a separate return shall be made for the period between the close of his last calendar year and the date designated as the close of the fiscal year; and if the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. The taxable net income, or for corporations the taxable net income as reduced by the deductions contained in section 290.21, 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 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, or for corporations the taxable net income as reduced by the deductions contained in section 290.21, 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 which the number of days in such short period bears to 365 days. Where the short period is 359 days or more, the tax shall be computed in the same manner as if such short period were an entire year.

**History:** *1933 c 405 s 31; 1955 c 124 s 1; 1980 c 419 s 20; 1981 c 178 s 86; 1982 c 523 art 1 s 37 (2394-31)*

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

The tax imposed on a taxpayer for a period beginning in one calendar year, hereinafter called "first calendar year," and ending in the following calendar year, hereinafter called "second calendar year," when the law applicable to the first calendar year is different from the law applicable to the second calendar year, shall be the sum of (1) that proportion of a tax for the entire period, computed under the law applicable to the first calendar year, which the portion of such period falling within the first calendar year is of the entire period, and (2) that proportion of a tax for the entire period, computed under the law applicable to the second calendar year, which the portion of such period falling within the second calendar year is of the entire period.

**History:** *1933 c 405 s 32-1; Ex1937 c 49 s 21 (2394-32a)*

## 290.34 CORPORATIONS, SPECIAL PROVISIONS.

Subdivision 1. **Business conducted in such a way as to create losses or improper taxable net income.** When any corporation liable to taxation under this chapter conducts its business in such a manner as, directly or indirectly, to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodi-

ties or services in which it deals at less than the fair price which might be obtained therefor, or buying such commodities or services at more than the fair price for which they might have been obtained, or when any corporation, a substantial portion of whose shares is owned directly or indirectly by another corporation, deals in the commodities or services of the latter corporation in such a manner as to create a loss or improper net income or to reduce the taxable net income attributable to this state, the commissioner of revenue may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income or the overstatement of its losses, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business.

Subd. 2. **Affiliated or related corporations, combined report.** When a corporation which is required to file an income tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or has its income regulated through contract or other arrangement, the commissioner of revenue may permit or require such combined report as, in his opinion, is necessary in order to determine the taxable net income of any one of the affiliated or related corporations. For purposes of computing either the arithmetic average or weighted apportionment formulas under section 290.19, subdivision 1 for each corporation involved, the numerator of the fraction shall be that corporation's sales, property, and payroll in Minnesota and the denominator shall be the total sales, payroll, and property of all the corporations shown on the combined report. The combined report shall reflect the income of the entire unitary business as provided in section 290.17, subdivision 2, clause (4). The combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state. All intercompany transactions between companies which are contained on the combined report shall be eliminated. This subdivision shall not apply to insurance companies whose income is determined under section 290.35.

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.

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

**History:** *1933 c 405 s 32; 1941 c 458; 1941 c 550 s 13; 1973 c 582 s 3; 1981 c 178 s 87; 3Sp1981 c 2 art 3 s 15; 1982 c 523 art 29 s 4 (2394-32)*

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

The taxable net income of insurance companies taxable under this chapter shall be computed as follows:

Each such company shall report to the commissioner the net income returned by it for the taxable year to the United States under the provisions of the act of congress, known as the revenue act of 1936, or that it would be required to return as net income thereunder if it were in effect. The commissioner shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business; provided, the commissioner shall add to the taxable net income so apportioned to this state the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge 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:** *1933 c 405 s 32-2; Ex1937 c 49 s 21; 1981 c 178 s 88; 1Sp1981 c 4 art 1 s 135 (2394-32b)*

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

The taxable net income of investment companies shall be computed and be exclusively as follows:

Each investment company transacting business as such in this state shall report to the commissioner the net income returned by the company for the taxable year to the United States under the provisions of the Internal Revenue Code of 1954, as amended through December 31, 1981, less the credits provided therein. The commissioner shall compute therefrom the taxable net income of the investment company by assigning to this state that proportion of such net income, less such credits which the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of this state, bears to the total amount of the gross payments collected during such year by the company from such business upon investment contracts issued by the company and held by persons residing within the state and elsewhere.

As used in this section, the term "investment company" means any person, co-partnership, association, or corporation, whether local or foreign, coming within the purview of section 54.26, and who or which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 and following), and who or which solicits or receives payments to be made to himself or itself and which issues therefor, or has issued therefor and has or shall have outstanding so-called bonds, shares,

coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof money or anything of value at some future date; and as to whom the gross payments received during the taxable year in question upon outstanding investment contracts, plus interest and dividends earned on investment contracts determined by prorating the total dividends and interest for the taxable year in question in the same proportion that certificate reserves as defined by the Investment Company Act of 1940 is to total assets, shall be at least 50 percent of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year in question. The term "investment contract" shall mean any such so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement issued by an investment company.

**History:** *1933 c 405 s 32-3; Ex1937 c 49 s 21; 1947 c 635 s 19; 1977 c 386 s 6; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1982 c 523 art 1 s 38; art 40 s 14 (2394-32c)*

**290.361 NATIONAL AND STATE BANKS; IMPOSITION OF EXCISE TAX, COMPUTATION, SURTAX.**

Subdivision 1. **Imposition of excise tax.** An excise tax measured by net income is hereby imposed on national and state banks by this chapter and shall be governed by the provisions of section 290.02.

Subd. 2. **Computation of taxable net income.** The taxable net income shall be computed in the manner provided by this chapter except that in the case of national and state banks: (a) the rates shall be as established in section 290.06, subdivision 1; (b) the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940, instead of January 1, 1933; (c) property consisting of investments in bonds, stocks, notes, debentures, mortgages, certificates, or any evidence of indebtedness, and any property acquired in liquidation thereof when such property is held for investment or for sale, shall not be deemed to be capital assets; and (d) in computing net income there shall be allowable as a deduction from gross income, in addition to deductions otherwise provided for in this chapter, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from federal income taxes, on the preferred stock of the bank owned by the United States or such instrumentality.

Subd. 3. [Repealed, 1971 c 34 s 1]

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

Subd. 5. **In lieu of certain taxes.** The tax hereby imposed upon national and state banks shall be in lieu of all taxes upon the capital, surplus, property, assets, and shares of these banks, except taxes imposed upon real property.

Subd. 6. [Repealed, Ex1971 c 31 art 6 s 5]

Subd. 7. [Repealed, Ex1971 c 31 art 6 s 5]

**History:** *1941 c 18 s 1; 1945 c 604 s 22; 1947 c 635 s 12; 1949 c 642 s 12; 1951 c 605 s 4; Ex1957 c 1 art 7 s 3; 1959 c 157 s 10; Ex1959 c 70 art 3 s 9,10; Ex1961 c 91 art 1 s 3; Ex1961 c 91 art 5 s 2; 1963 c 886 s 5,6; 1965 c 884 art 1 s 5,6; Ex1967 c 32 art 12 s 2, art 14 s 6,7; 1969 c 399 s 49; 1969 c 881 s 7,8; 1971 c 759 s 1; Ex1971 c 2 s 5-7; Ex1971 c 31 art 6 s 3,4; 1973 c 650 art 8 s 1; 1973 c 650 art 25 s 1; 1980 c 419 s 21; 3Sp1981 c 2 art 3 s 16*

**290.362** [Renumbered 290.085]

**290.363** [Repealed, 1980 c 419 s 46]

## 290.37 FILING REQUIREMENTS.

Subdivision 1. **Persons making returns.** (a) 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.

(b) Such return shall (1) be verified or contain a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, and (2) shall contain a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

(c) 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, 1981, modified and adjusted in accordance with the provisions of sections 290.01, subdivision 20b, clauses (1), (6) and (11), 290.08, and 290.17.

Subd. 2. **Verification.** If a return is prepared for a taxpayer by a person (or persons) or a firm (including partnerships, corporations, etc.), the individual or firm responsible for such preparation shall complete the statement of verification provided on the income return forms in the following manner:

(a) If the person (or persons), responsible for the preparation of the return is an individual acting in his own capacity, the statement of verification shall be signed by such individual;

(b) If a firm is responsible for the preparation of the return, the statement of verification shall be signed with the firm name. However, if the firm name is stamped or typed, it should be followed by the signature of a person authorized to sign the verification on behalf of the firm. The firm may authorize any officer, member, or employee to sign the verification.

Such verification is not required if the actual preparation of the return is a regular and usual incident of the employment of one regularly and continuously employed for full time by the person for whom the return is made (such as a clerk, secretary, bookkeeper, etc.).

Subd. 3. **Information included in return.** The return provided for herein shall require a statement of the name of the taxpayer, or taxpayers, if the return be a joint return, and the address of such taxpayer in the same name or names and same address as the taxpayer has used in making his income tax return to the United States under the terms of the internal revenue 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:** *1933 c 405 s 33; Ex1937 c 49 s 32; 1943 c 656 s 14; 1945 c 604 s 11; 1947 c 635 s 18; 1951 c 609 s 2; 1953 c 664 s 1; 1957 c 934 s 1; 1959 c 367 s 1; Ex1959 c 70 art 3 s 11,12; 1963 c 355 s 11; 1965 c 403 s 1; 1969 c 308 s 1; 1971 c 44 s 1; 1971 c 101 s 1; 1971 c 769 s 2; 1973 c 55 s 1; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1977 c 423 art 1 s 13; 1978 c 721 art 2 s 2; 1978 c 766 s 6; 1979 c 303 art 1 s 22; 1980 c 607 art 1 s 23,32; 1981 c 60 s 27; 1981 c 343 s 10; 1Sp1981 c 3 s 5; 1982 c 523 art 1 s 39; art 40 s 14 (2394-33)*

## 290.38 JOINT RETURNS OF HUSBAND AND WIFE.

A husband and wife may make a single return jointly even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. If both husband and wife have gross income they may elect to either file a single return jointly or may file separate returns pursuant to this section or as provided in section 290.39, subdivision 2. This election to file a joint or separate returns may be changed within the period provided for the assessment of additional taxes on said return or returns. In the event taxpayers desire to change their election, such change shall be done in the manner and on such form as the commissioner shall prescribe by regulation.

No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year or if the taxable year of either spouse is a fractional part of a year under section 290.32.

In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by the personal representative of his estate; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if (a) no return for the taxable year has been made by the decedent, (b) no personal representative has been appointed, and (c) no personal representative is appointed before the last day prescribed by law for filing the return of the surviving spouse. If a personal representative of the estate of the decedent is appointed after the joint return has been filed by the surviving spouse, the personal representative may disaffirm such joint return by filing, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

If husband and wife determine their federal income tax on a joint return but determine their Minnesota income taxes separately, they shall determine their Minnesota gross income separately as if their federal adjusted gross incomes had been determined separately.

**History:** *1933 c 405 s 34; 1953 c 664 s 2; Ex1959 c 70 art 3 s 13; 1961 c 213 art 4 s 5; 1971 c 54 s 1; 1971 c 445 s 1; 1975 c 349 s 30; 1980 c 419 s 22 (2394-34)*

## 290.39 RETURN; FORM AND FILING.

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

Subd. 1a. **Tax tables.** Notwithstanding any other provision of this chapter to the contrary, the commissioner may, in his discretion, prepare tables for computing the tax for individuals, estates, and trusts which may reflect the allowance of personal and dependent credits or which may reflect the allowance of the standard deduction and the personal and dependent credits.

Subd. 2. **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;

(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, 1981 (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:** *1933 c 405 s 35,36; 1959 c 367 s 2; 1967 c 582 s 1; 1971 c 445 s 2; 1973 c 582 s 3; 1978 c 766 s 2,7; 1981 c 178 s 89; 1981 c 343 s 11-13; 1982 c 523 art 40 s 14 (2394-35, 2394-36)*

**290.391 AMENDED RETURNS.**

Any taxpayer who finds that his income tax return as originally filed is in error may correct such error by filing an amended return. An amended return

should be filed on a return form for the same year as the return that is being corrected and the words "Amended Return" should be placed at the top of page one of the return. The filing date of the original return starts the running of the statute of limitations, and any subsequent filing of an amended return does not toll the statute.

If the taxpayer is entitled to a credit or refund due to the correction, the amended return will serve as a claim or a claim for refund form may be filed. In either case the claim must be filed before the limitation period expires.

**History:** *1965 c 191 s 1*

**290.40 ANNUAL RETURN, EXCEPTIONS.**

The return shall cover a 12-month period, except in the following cases:

(1) The return made by or for any taxpayer who was in existence for less than the whole of a taxable year shall cover that part of the taxable year during which such taxpayer was in existence;

(2) A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week, and ends always (a) on whatever date such same day of the week last occurs in a calendar month or (b) on whatever date such same day of the week falls which is nearest to the last day of a calendar month, may, in accordance with regulations prescribed by the commissioner, elect to compute his net income and taxable net income on the basis of such annual period. In any case in which the effective date or the applicability of any provision of this chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described herein shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or as ending with the last day of the calendar month ending nearest to the last day such taxable year, as the case may be;

(3) A taxpayer who changes from one taxable year to another shall make a return from the fractional parts of a year, as specified in section 290.32.

**History:** *1933 c 405 s 37; 1955 c 123 s 1; 1980 c 419 s 23 (2394-37)*

**290.41 INFORMATION RETURNS.**

Subdivision 1. **By partnerships.** Partnerships shall make a return for each taxable year which shall conform in every respect to the requirements of section 290.39, and shall, in addition, include the names and addresses of all partners entitled to a distributive share in their taxable net income and the amount of such distributive share to which each is entitled. The return shall contain or be verified by a written declaration that it is made under the penalties of criminal liability for wilfully making a false return.

Subd. 2. **By persons, 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 of $600 or more 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 of $10 or more 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, 1981) 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.

Subd. 3. **By brokers.** The commissioner of revenue may require brokers to furnish him with the names of customers for whom they have transacted business, and with such details as to transactions of any customer as will enable him to determine whether all income tax due on profits or gains of such customers has been paid.

Subd. 4. **By agents.** The commissioner may require any person acting as agent for another to make a return giving such information as may be reasonably necessary to properly assess and collect the tax imposed by this chapter upon the person for whom he acts.

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, 1981.

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, 1981, 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, 1981, 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:** *1933 c 405 s 38; Ex1937 c 49 s 22; 1941 c 550 s 14; 1951 c 609 s 3,4; 1951 c 648 s 4; 1959 c 593 s 1; 1965 c 244 s 1; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1981 c 60 s 19,20; 1981 c 343 s 14-16; 1982 c 424 s 113; 1982 c 523 art 1 s 40; art 40 s 14 (2394-38)*

## 290.42 FILING RETURNS, DATE.

The returns required to be made under sections 290.37 to 290.39 and 290.41, other than those under section 290.41, subdivisions 3 and 4, which shall be made

within 30 days after demand therefor by the commissioner, shall be filed at the following times:

(1) Returns made on the basis of the calendar year shall be filed on the fifteenth day of April, following the close of the calendar year, except that returns of corporations shall be filed on the fifteenth day of March following the close of the calendar year;

(2) Returns made on the basis of the fiscal year shall be filed on the fifteenth day of the fourth month following the close of such fiscal year, except that returns of corporations shall be filed on the fifteenth day of the third month following the close of the fiscal year;

(3) Returns made for a fractional part of a year as an incident to a change from one taxable year to another shall be filed on the fifteenth day of the fourth month following the close of the period for which made, except that such returns of corporations shall be filed on the fifteenth day of the third month following the close of the period for which made;

(4) Other returns for a fractional part of a year shall be filed on the fifteenth day of the fourth month following the end of the month in which falls the last day of the period for which the return is made, except that such returns of corporations shall be filed on the fifteenth day of the third month following the end of the month in which falls the last day of the period for which the return is made:

In the case of a final return of a decedent for a fractional part of a year, such return shall be filed on the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of a year.

(4a) In the case of the return of a cooperative association such returns shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

(5) If the due date for any return required under chapter 290 falls upon:

A Saturday, Sunday, or a legal holiday such return filed by the next succeeding day which is not a Saturday, Sunday, or legal holiday shall be considered to be timely filed. The term "legal holiday" means any day made a holiday in Minnesota by section 645.44, subdivision 5 or by the laws of the United States.

(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 6081 of the Internal Revenue Code of 1954, as amended through December 31, 1981. 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 rule 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:** *1933 c 405 s 39; Ex1937 c 49 s 23; 1949 c 734 s 12; 1951 c 607 s 1; 1953 c 622 s 1; 1955 c 2 s 1; 1959 c 72 s 1; 1961 c 100 s 1; 1967 c 113 s 1; 1981 c 178 s 90; 1981 c 343 s 17; 1982 c 523 art 1 s 41 (2394-36)*

### 290.43 RETURNS, WHERE FILED.

The returns required to be made under sections 290.37 to 290.39 and 290.41 shall be filed with the commissioner at his office in St. Paul, or such other place as the commissioner may designate.

**History:** *1933 c 405 s 40; 1955 c 168 s 1; 1981 c 343 s 18 (2394-40)*

### 290.431 NON-GAME WILDLIFE CHECKOFF.

Every individual who files an income tax return or property tax refund claim form may designate on their original return that $1 or more shall be added to the tax or deducted from the refund that would otherwise be payable by or to that individual 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:** *1980 c 607 art 1 s 24; 1981 c 356 s 340; 1982 c 523 art 1 s 42*

### 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:** *1933 c 405 s 41; 1975 c 349 s 30; 1981 c 343 s 19 (2394-41)*

## 290.45 PAYMENT OF TAX, TIME FOR.

Subdivision 1. **Date due, installments.** The tax imposed by this chapter shall be paid to the commissioner of revenue at the time fixed for filing the return on which the tax is based, except that at the election of the following taxpayers the balance of tax due after applying any tax credit and payment of estimated tax may be paid in two equal installments, as follows:

(a) as to estates and trusts, the first shall be paid at the time fixed for filing the return, and the second on or before six months thereafter.

(b) as to corporations, the first shall be paid at the time fixed for filing the return and the second on or before three months thereafter. If any installment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.

Subd. 2. **Extensions.** At the request of the taxpayer, and for good cause shown, the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid together with interest at the rate specified in section 270.75 on or before the date of the expiration of the period of the extension.

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

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.

Subd. 4. **Tax due of $1 or less.** Notwithstanding any other provision of law, any taxpayer whose unpaid liability for income taxes, as reflected upon the return prepared by said taxpayer, is $1 or less, need not pay such amount.

**History:** *1933 c 405 s 42; 1941 c 335 s 1; 1941 c 550 s 15; 1949 c 734 s 15; 1951 c 607 s 2; Ex1957 c 1 art 6 s 1; 1961 c 213 art 2 s 1; 2Ex1961 c 1 s 2,3; 1967 c 116 s 1; 1969 c 160 s 1; 1969 c 325 s 3; 1971 c 38 s 1; 1973 c 582 s 3; 1975 c 377 s 11; 1981 c 178 s 91; 1982 c 523 art 1 s 43; art 2 s 28 (2394-42)*

## 290.46 EXAMINATION OF RETURNS; ASSESSMENTS, REFUNDS.

The commissioner shall, as soon as practicable after the return is filed, examine the same and make any investigation or examination of the taxpayer's records and accounts that he may deem necessary for determining the correctness of the return. The tax computed by him on the basis of such examination and investigation shall be the tax to be paid by such taxpayer. If the tax found due shall be greater than the amount reported as due on the taxpayer's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the commissioner within 60 days after notice of the amount and demand for its payment shall have been mailed to the taxpayer by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the taxpayer on his return which have not yet been paid shall be paid to the commissioner within 60 days after notice of the amount thereof and demand for payment shall have been mailed to the taxpayer by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the taxpayer's return, the excess shall be refunded to the taxpayer in the manner provided by section 290.50 (except that no demand therefor shall be

necessary), if he has already paid the whole of such tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in section 290.50.

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:** *1933 c 405 s 43; 1939 c 446 s 21; 1947 c 635 s 13; 1957 c 764 s 1; Ex1959 c 58 s 1; 1965 c 255 s 1; 1969 c 307 s 1; 1978 c 767 s 19; 1981 c 178 s 92; 1981 c 343 s 20 (2394-43)*

## 290.47 ASSESSMENT; FAILURE TO FILE RETURN, FALSE OR FRAUDULENT RETURN FILED.

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

**History:** *1933 c 405 s 44; Ex1937 c 49 s 30; 1941 c 550 s 16; 1978 c 767 s 20 (2394-44)*

## 290.48 DELINQUENT TAXES, COLLECTION.

Subdivision 1. [Repealed, 1982 c 523 art 2 s 49]

Subd. 2. [Repealed, 1982 c 523 art 2 s 49]

Subd. 3. **Collection jeopardized by delay.** The commissioner may proceed under the provisions of section 270.70 when he has reasonable grounds for believing that the collection of any taxes, interest, or penalties due under this

chapter will be jeopardized by delays incident to other methods of collection; and, in such cases, no preliminary notice and demand shall be required.

Subd. 4. **Assessment jeopardized by delay.** If the commissioner has reasonable grounds for believing that a taxpayer is about to remove himself or his property from this state with the purpose of evading the tax imposed by this chapter, or that the collection of the tax will be jeopardized by delays incident to other methods of collection, he may immediately declare the taxpayer's taxable year at an end and assess a tax on the basis of his own knowledge or information available to him, mail the taxpayer written notice of the amount thereof, at his last known address, demand its immediate payment; and, if payment is not immediately made, collect the tax by any method prescribed in chapter 270, except that it need not await the expiration of the periods of time therein specified.

Subd. 5. **Ordinary action at law or in equity.** In addition to all other methods authorized for the collection of the tax, it may be collected in an ordinary action at law or in equity by the state against the taxpayer. In any action commenced pursuant to this subdivision, upon the filing of an affidavit of default, the clerk of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 6. **Appeals.** Either party to an action or a judgment for the recovery of any taxes, interest, or penalties under subdivision 5 may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

Subd. 7. **Injunction forbidden.** No suit shall lie to enjoin the assessment or collection of any taxes imposed by this chapter, or the interest and penalties imposed thereby.

Subd. 8. **Tax presumed valid.** The tax, as assessed by the commissioner, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its incorrectness or invalidity. Any statement filed by the commissioner with the clerk of court, or any other certificate by the commissioner of the amount of the tax and penalties as determined or assessed by him, shall be admissible in evidence and shall establish prima facie the facts set forth therein.

Subd. 9. [Repealed, 1982 c 523 art 2 s 49]

**History:** *1933 c 405 s 45; 1957 c 763 s 1,2; 1959 c 367 s 3-5; 1959 c 596 s 1; 1965 c 464 s 1; 1969 c 305 s 1; 1978 c 674 s 60; 1978 c 767 s 21,22; 1981 c 178 s 93; 1982 c 523 art 2 s 29-32 (2394-45)*

## 290.49 TIME LIMIT ON ASSESSMENT, COLLECTION.

Subdivision 1. **Assessment, generally.** Except as otherwise provided in this chapter the amount of taxes assessable shall be assessed within three and one-half years after the return is filed. Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by mail to the post office address given in the return, 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.

Subd. 2. **Assessment, court proceedings; income in respect of decedent, income to trustee, fiduciary, corporation.** In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a

trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by a corporation, the tax shall be assessed within 18 months, and any proceeding in court for the collection of such tax shall be begun within two years after written request for such assessment (filed after the return is made and in such form as the commissioner may prescribe) by the personal representative or other fiduciary representing the estate of such decedent, or by the trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by the corporation, but except as provided in subdivision 8, no assessment shall be made after the expiration of three and one-half years after the return was filed, and no action shall be brought after the expiration of four years after the return was filed.

This subdivision shall not apply in the case of a corporation unless

(1) such written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of such 18-months period; and

(2) the dissolution is in good faith begun before the expiration of such 18-months period; and

(3) the dissolution is completed.

Subd. 3. **Omission in excess of 25 percent.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within six and one-half years after the return was filed.

For purposes of this subdivision, the term "gross income" shall mean gross income as defined in section 290.37, subdivision 1, clause (c).

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.

Subd. 5. **Computation of time.** For the purposes of this section and of section 290.50, a return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day.

Subd. 6. **No return or false or fraudulent return.** When a taxpayer files a false or fraudulent return with intent to evade tax or when a taxpayer fails to file a return the tax may be assessed, and a proceeding in court for the collection of such tax may be begun at any time.

Subd. 7. **Court proceedings.** Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, including an assessment made under section 290.56, such tax may be collected by a proceeding in court, but only if begun

(1) within eighteen months after the expiration of the period for the assessment of the tax, or

(2) within eighteen months after the expiration of the period agreed upon by the commissioner and the taxpayer, pursuant to the provisions of subdivision 8, or

(3) within eighteen months after final disposition of any appeal from the order of assessment.

Subd. 8. **Consent to extend time.** Where before the expiration of the time prescribed in subdivisions 1 and 2 for the assessment of the tax, the commissioner and the taxpayer consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period

agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Subd. 9. [Repealed, 1980 c 419 s 46]

Subd. 10. **Incorrect determination of federal adjusted gross income.** Notwithstanding any other provision of this chapter, if a taxpayer whose gross income is determined under section 290.01, subdivisions 20 to 20f, omits from income such an amount as will under the Internal Revenue Code of 1954, as amended through December 31, 1981 extend the statute of limitations for the assessment of federal income taxes; or otherwise incorrectly determines his federal adjusted gross income resulting in adjustments by the Internal Revenue Service then the period of assessment and determination of tax shall be the same as that under the Internal Revenue Code of 1954, as amended through December 31, 1981. When a change is made to federal income during the extended time provided under this subdivision, the provisions under section 290.56 regarding additional extensions apply.

Subd. 11. **Suspension of time; bankruptcy proceeding.** The period of time during which a tax must be assessed or collection proceedings commenced under this chapter shall be suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after notice to the commissioner of revenue that the bankruptcy proceedings have been closed or dismissed or the automatic stay has been terminated or has expired.

The suspension of the statute of limitations under this subdivision shall apply to the person against whom the petition in bankruptcy is filed and all other persons who may also be wholly or partially liable for the tax under this chapter.

**History:** *1933 c 405 s 46; Ex1936 c 87 s 1; Ex1937 c 49 s 24; 1939 c 59 s 2; 1939 c 446 s 14; 1941 c 550 s 1; 1943 c 656 s 15; 1945 c 604 s 12; 1947 c 635 s 14; 1949 c 734 s 13; 1951 c 269 s 1; 1951 c 649 s 1-4; 1955 c 125 s 1; 1955 c 128 s 1; 1961 c 213 art 4 s 6; 1961 c 505 s 1,2; 1961 c 509 s 1; 1961 c 511 s 1; 1969 c 718 s 1; 1971 c 769 s 2; 1973 c 21 s 1; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1978 c 674 s 33; 1980 c 419 s 24; 1980 c 607 art 1 s 25,32; 1981 c 60 s 27; 1981 c 178 s 94,95; 1982 c 523 art 1 s 44-46; art 40 s 14 (2394-46)*

## 290.50 OVERPAYMENTS, CLAIMS FOR REFUND OR CREDITS.

Subdivision 1. **Procedure, time limit.** (a) A taxpayer who has paid or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. Except as otherwise provided in this section, no claim or refund shall be allowed or made after three and one-half years from the date prescribed for filing the return (plus any extension of time granted for filing the return, but only if filed within the extended time) or after two years from the date of overpayment, whichever period is longer, unless before the expiration of the period a claim is filed by the taxpayer. For this purpose an income tax return or amended return claiming an overpayment shall constitute a claim for refund.

(b) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable if a claim was filed on the date the credit or refund is allowed.

(c) If a claim relates to an overpayment on account of a failure to deduct a loss due to a bad debt or to a security becoming worthless, the claim shall be allowed if filed within seven years from the date prescribed in section 290.42 for the filing of the return, and the refund or credit shall be limited to the amount of overpayment attributable to the loss.

(d) For purposes of this section, the prepayment of tax made through the withholding of tax at the source, or payment of estimated tax, prior to the due date of the tax are considered as having been paid on the last day prescribed by law for the payment of the tax by the taxpayer. A return filed before the due date shall be considered as filed on the due date.

(e) Except as provided in sections 290.92, subdivision 13, and 290.936, interest on the overpayment refunded or credited to the taxpayer shall be allowed at the rate of six percent per annum computed from the date of payment of the tax until the date the refund is paid or credit is made to the taxpayer. However, to the extent that the basis for the refund is a net operating loss carryback 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.

Subd. 2. **Denial of claim, court proceedings.** If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the taxpayer in the manner prescribed in section 290.46. An appeal from this order may be taken to the Minnesota tax court in the manner prescribed in section 271.06, or the taxpayer may commence an action against the commissioner to recover the denied overpayment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or if an estate or trust, of the principal place of its administration, or in the district court for Ramsey county. The action in the district court shall be commenced within 18 months following the mailing of the order of denial to the taxpayer. If a claim for refund is filed by a taxpayer and no order of denial is issued within six months of the filing, the taxpayer may commence an action in the district court as in the case of a denial, but the action shall be commenced within two years of the date that the claim for refund was filed.

Subd. 3. **Exceptions.** This section shall not be construed so as to disallow:

(a) a net operating loss carryback to any taxable year authorized by section 290.095 or section 172 of the Internal Revenue Code of 1954, as amended through December 31, 1981, 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.

Subd. 4. **Consent to extend time.** If the commissioner and the taxpayer have within the periods prescribed in subdivision 1 consented in writing to any extension of time for the assessment of the tax under the provisions of section 290.49, subdivision 8, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the taxpayer have consented to an extension for the assessment of the tax and six months thereafter, provided, however, that the period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

Subd. 5. **Overpayments; credits and refunds.** (a) If the amount allowable as a credit under section 290.92, subdivision 12 (relating to credit for tax withheld at source) or an amount determined to be an overpayment under section 290.93, subdivision 9, exceeds the taxes imposed by this chapter against which such credit is allowable the amount of such excess shall be considered an overpayment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which such amount was paid.

(b) Notwithstanding any other provision of law to the contrary, in the case of any overpayment the commissioner, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of Minnesota income tax on the part of the person who made the overpayment or against any liability in respect to Minnesota income tax on the part of either spouse who shall have filed a joint 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 determined by the commissioner to be an overpayment of the income tax for a preceding taxable year.

Subd. 6. **Withholding of refunds from child support debtors.** Upon a finding by a court of this state that a person obligated to pay child support is delinquent in making payments, the amount of child support unpaid and owing shall be withheld from a refund due the person under this section. The public agency responsible for child support enforcement or the parent or guardian of a child for whom the support is owed may petition the district or county court for an order providing for the withholding of the amount of child support unpaid and owing as determined by court order. The person from whom the refund may be withheld shall be notified of the petition pursuant to the rules of civil procedure prior to the issuance of an order pursuant to this subdivision. The order may be granted on a showing to the court that required support payments have not been made when they were due.

On order of the court, the support money shall be withheld by the commissioner from the refund due to the person obligated to pay the support and the amount withheld shall be remitted to the public agency responsible for child support enforcement or to the parent or guardian petitioning on behalf of the child, provided that any delinquent tax obligations of the taxpayer owed to the revenue department shall be satisfied first. Any amount received by the responsible public agency or the petitioning parent or guardian in excess of the amount of public assistance expended for the benefit of the child to be supported, or the amount of any support that had been the subject of the claim pursuant to this subdivision which has been paid by the taxpayer prior to the diversion of the refund, shall be remitted to the person entitled to the money. If the refund is based on a joint or combined return, the portion of the refund that shall be remitted to the petitioner shall be the proportion of the total refund that equals the proportion of the total federal adjusted gross income of the spouses that is the federal adjusted gross income of the spouse who is delinquent in making the child support payments. A petition filed pursuant to this subdivision shall be in effect with respect to any refunds due under this section during a period of one year from the date when the petition was filed. If a petition is filed pursuant to this subdivision and a claim is made pursuant to chapter 270A with respect to the same individual's refund and notices of both are received prior to the time when payment of the refund is made on either claim, the commissioner shall transmit the claims to the court that issued the order under this subdivision. The court shall order that the claim relating to the liability that accrued first in time shall be paid

first; any amount of the refund remaining shall then be applied to the other claim. The provisions of section 290.61 shall not prohibit the exchange of information among the department, the petitioner, and the court to the extent necessary to accomplish the intent of this subdivision. Not later than five days after the court has notified the department of its withholding order, the department shall send a written notification of the order to the person to whom the refund would otherwise be paid.

**History:** *1933 c 405 s 47; 1939 c 446 s 15,19; 1941 c 550 s 18,22; 1943 c 656 s 16; 1945 c 604 s 21; 1947 c 635 s 15; 1949 c 734 s 14; 1951 c 649 s 5-7; 1953 c 625 s 1; 1957 c 771 s 1; Ex1959 c 58 s 2; 2Ex1961 c 1 s 4; 1965 c 390 s 1; 1969 c 325 s 4; 1969 c 399 s 49; 1969 c 1041 s 1; 1971 c 37 s 1; 1973 c 20 s 1; 1973 c 492 s 14; 1975 c 349 s 18-20; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 96-98; 1982 c 523 art 4 s 1; art 40 s 14 (2394-47)*

NOTE: Subdivision 6 expires June 30, 1984. See Laws 1982, Chapter 523, Article 4, Section 2.

**290.501 CLAIM FOR REFUND OF SALES TAX.**

A person entitled to a refund of sales tax pursuant to section 297A.35, subdivision 3, shall claim such refund on his Minnesota income tax return, or if the person is not required to file an income tax return, upon such form as the commissioner may prescribe. The claim shall apply to the taxable year covered by the return upon which the claim is made or, if no return is required, then to a calendar year. If no return is required, the claim shall be filed on or before April 15 for the preceding calendar year. Each claim shall be accompanied by a certificate from the electrical retailer furnishing the claimant with electricity to the effect that such electrical retailer has not previously filed a claim for refund of tax in respect to the purchase for which the claim is made.

The commissioner, within the applicable period of limitations, may offset the amount of the claim against any liability of the person for income tax and pay the balance due, if any, to the claimant. All payments pursuant to this section shall be made from the general fund in amounts equal to the credits and payments authorized by section 297A.35, subdivision 3. So much money as is needed therefor is annually appropriated from the general fund. The provisions of appeals from this section shall be governed by section 297A.35.

**History:** *1969 c 399 s 49; 1969 c 1049 s 2*

**290.51** [Repealed, 1982 c 523 art 2 s 49]

**290.52 ADMINISTRATION, ENFORCEMENT.**

The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this chapter. He may, from time to time, make, publish, and distribute rules and regulations in enforcing its provisions. In his discretion he may make a charge for copies distributed upon request. He shall cause to be prepared blank forms for the returns required by this chapter. The commissioner shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this chapter. The commissioner may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commissioner, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their case. Such commissioner may,

after due notice and opportunity for hearing, suspend and disbar from further practice before him, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations.

**History:** *1933 c 405 s 50; Ex1937 c 49 s 27; 1939 c 446 s 17; 1943 c 656 s 18; 1955 c 126 s 1 (2394-50)*

## 290.521 ACTION TO ENJOIN INCOME TAX RETURN PREPARERS.

Subdivision 1. **Authority to seek injunction.** A civil action in the name of the state of Minnesota to enjoin any person who is an income tax return preparer doing business in this state from further engaging in any conduct described in subdivision 2 or from further acting as an income tax return preparer may be commenced at the request of the commissioner of revenue. Any action under this section shall be brought by the attorney general in the district court for the judicial district in which the income tax return preparer resides or has his principal place of business, or in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state of Minnesota against the income tax return preparer or any taxpayer.

Subd. 2. **Adjudication and decrees.** In any action under subdivision 1, if the court finds:

(a) that an income tax return preparer has:

(1) engaged in any conduct subject to the civil penalty under section 290.523,

(2) misrepresented his eligibility to practice before the department of revenue, or otherwise misrepresented his experience or education as an income tax return preparer,

(3) guaranteed the payment of any tax refund or the allowance of any tax credit, or

(4) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the provisions of this chapter, and

(b) that injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the person from further engaging in such conduct. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in clauses (1) to (4) of clause (a) of this subdivision, and that an injuction prohibiting such conduct would not be sufficient to prevent the person's interference with the proper administration of this chapter, the court may enjoin the person from acting as an income tax return preparer. The court may not under this section enjoin the employer of an income tax return preparer for conduct described in clauses (1) to (4) of clause (a) of this subdivision engaged in by one or more of the employer's employees unless the employer was also actively involved in such conduct.

Subd. 3. **Income tax return preparer defined.** For purposes of this section and section 290.523, the term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this chapter, or any claim for refund of tax imposed by this chapter. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund.

A person shall not be an income tax return preparer merely because the person:

(a) furnishes typing, reproducing, or other mechanical assistance,

(b) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom he is regularly and continuously employed,

(c) prepares as a fiduciary a return or claim for refund of any person, or

(d) prepares a claim for refund for a taxpayer in response to any tax order issued to the taxpayer.

**History:** *1982 c 523 art 31 s 1*

## 290.523 UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

Subdivision 1. **Wilful understatement of liability.** If any part of any understatement of liability with respect to any return or claim for refund is due to a wilful attempt in any manner to understate the liability for a tax by a person who is an income tax return preparer with respect to the return or claim, the person shall pay to the commissioner a penalty of $500 with respect to the return or claim. The penalty under this section may not be assessed against the employer of an income tax preparer unless the employer was actively involved in the wilful attempt to understate the liability for a tax. This penalty shall be considered to be an income tax liability and may be assessed at any time as provided in section 290.49, subdivision 6. In any proceeding involving the issue of whether or not an income tax return preparer has wilfully attempted in any manner to understate the liability for tax, the burden of proof in respect of the issue shall be upon the commissioner, and the return of the taxpayer may be disclosed to the income tax return preparer notwithstanding section 290.61.

Subd. 2. **Understatement of liability defined.** For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed by this chapter, or any overstatement of the net amount creditable or refundable with respect to any such tax. The determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.

**History:** *1982 c 523 art 31 s 2*

## 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 if the taxpayer is not required to pay the amount in dispute pending appeal under section 290.531, there shall be added thereto a specific penalty equal to ten percent of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. Interest accruing upon the tax due as disclosed by the return or upon the amount determined as a deficiency from the date prescribed for the payment of the tax (if the tax is payable in installments, from the date the installment or installments become due and payable under the provisions of section 290.45, subdivision 1) shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under section 290.45, subdivision 2, interest shall be paid at the rate specified in section 270.75 from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not

made at the expiration of the extended period the penalties provided in this section shall apply.

Subd. 2. **Failure to make and file return.** In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law, there shall be added to the tax in lieu of the penalty provided in subdivision 1: ten percent if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, and the amount of said tax together with the amount so added shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

For the purposes of this subdivision the amount of any taxes required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

Subd. 3. **Failure to file, filing false or fraudulent return; intent to evade tax; 50 percent penalty.** If any person, with intent to evade the tax imposed by this 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.

Subd. 5. **Allocation of payments.** All payments received may, in the discretion of the commissioner of revenue, be credited first to the oldest liability not

secured by a judgment or lien, but in all cases shall be credited first to penalties, next to interest, and then to the tax due.

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

Subd. 7. **Interest on additional taxes.** Where a taxpayer is liable for additional taxes under this chapter, interest shall be added to the additional amount, at the rate specified in section 270.75, from the due date of the original return.

**History:** *1933 c 405 s 49; Ex1937 c 49 s 25; 1941 c 550 s 19; 1943 c 656 s 17; 1945 c 604 s 20; 1947 c 635 s 16; 1951 c 606 s 1; 1953 c 634 s 1; 1955 c 766 s 1; 1957 c 890 s 1; 1965 c 397 s 1; 1965 c 698 s 1; 1969 c 97 s 4; 1969 c 325 s 5,6; 1973 c 77 s 1,2; 1975 c 377 s 12,13; 1976 c 134 s 78; 1977 c 307 s 29; 1981 c 178 s 99,100; 1981 c 343 s 21,22; 1Sp1981 c 4 art 1 s 136; 3Sp1981 c 2 art 3 s 17; 1982 c 523 art 1 s 47; art 2 s 33,34 (2394-49)*

## 290.531 PAYMENT OF TAX PENDING APPEAL.

When a taxpayer appeals his tax liability under this chapter to the tax court, and the amount in dispute is more than $4,000, the entire amount of the tax shall be paid at the time it is due unless permission to continue prosecution of the petition without payment is obtained as provided herein. The petitioner, upon ten days notice to the commissioner, may apply to the court for permission to continue prosecution of the petition without payment; and, if it is made to appear

(1) That the proposed review is to be taken in good faith;

(2) That there is probable cause to believe that the taxpayer may be held exempt from the tax or that the tax may be determined to be less than 50 percent of the amount due; and

(3) That it would work a substantial hardship upon petitioner to pay the tax,

the court may permit the petitioner to continue prosecution of the petition without payment, or may fix a lesser amount to be paid as a condition of continuing the prosecution of the petition.

Failure to make payment of the amount required when due shall operate automatically to dismiss the petition and all proceedings thereunder unless the payment is waived by an order of the court permitting the petitioner to continue prosecution of the petition without payment.

**History:** *3Sp1981 c 2 art 3 s 18*

## 290.54 TAX A PERSONAL DEBT.

The tax imposed by this chapter, and interest and penalties imposed with respect thereto, shall become a personal debt of the taxpayer from the time the liability therefor arises, irrespective of when the time for discharging such liability by payment occurs. The debt shall, in the case of the personal representative of the estate of a decedent and in the case of any fiduciary, be that of such person in his official or fiduciary capacity only unless he shall have voluntarily distributed the assets held in such capacity without reserving sufficient assets to pay such tax, interest, and penalties, in which event he shall be personally liable for any deficiency. This provision shall apply only to cases in which this state is legally competent to impose such personal liability.

**History:** *1933 c 405 s 48; 1975 c 349 s 30; 1976 c 181 s 2; 1977 c 386 s 7; 1982 c 523 art 2 s 35 (2394-48)*

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

Subdivision 1. **Powers of examination.** For the purpose of determining the correctness of any return or of determining whether or not any person should have

made a return or paid taxes or for the purpose of collection of any such taxes hereunder, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determinations, or collecting such tax, including the taxpayer's retained copy of his return of income to the United States government for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the taxpayer or any other person or corporation. He shall further have power to require the attendance of any taxpayer or other person having knowledge or information in the premises to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 2. **Change in federal return.** If the amount of gross income, 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.

Subd. 5. **Extensions of time.** Any taxpayer who consents to any extension of time for the assessment of federal income taxes shall within 90 days of the execution of such consent notify the commissioner and the period of time in which the commissioner may recompute the tax is also extended, notwithstanding any period of limitations to the contrary as follows:

(a) For the periods provided in subdivisions 3 and 4; or

(b) For six months following the expiration of the extended federal period of limitations where no change is made by the federal authority.

**History:** *1933 c 405 s 51; 1957 c 767 s 1; 1963 c 355 s 13; 1969 c 1042 s 1; 1971 c 55 s 1; 1973 c 582 s 3; 1981 c 178 s 101-103 (2394-51)*

**290.57 EXAMINERS, APPOINTMENT OF.**

For the purpose of making such examinations and determinations, the commissioner may appoint such officers, to be known as income tax examiners, as he may deem necessary. If the commissioner deems it advisable, he may request the legislative auditor, for such period of time as he may direct, to audit such returns and conduct such examinations, and report thereon to the commissioner. Upon such request being made, the legislative auditor shall appoint such income tax examiners as he may deem necessary.

**History:** *1933 c 405 s 52; 1973 c 492 s 14 (2394-52)*

**290.58 EXAMINERS, POWERS OF.**

Such income tax examiners, whether appointed by the commissioner or by the legislative auditor, shall have all the rights and powers with reference to the examining of books, records, papers, or memoranda, and with reference to the subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony conferred upon the commissioner by this chapter. The clerk of any court of record, or any justice of the peace, upon demand of any such examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before such examiner. The commissioner may also issue subpoenas for the appearance of witnesses before him or before such examiners. The commissioner may appoint such referees as he deems necessary to review, singly or as a board of review, the reports of the income tax examiners and petitions or complaints of taxpayers, and report thereon to the commissioner. Disobedience of subpoenas issued under this chapter shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court.

**History:** *1933 c 405 s 53; 1973 c 492 s 14 (2394-53)*

**290.59 ADDITIONAL HELP.**

The commissioner, and the legislative auditor if requested to conduct examinations as hereinbefore provided, may appoint and employ such additional help, or purchase such supplies or materials or incur such other expenditures in the enforcement of this chapter as they may deem necessary. The salaries of all officers and employees provided for in this chapter shall be fixed by the commissioner, where appointed by him, and by the legislative auditor, where appointed by him, subject to the approval of the commissioner of administration.

**History:** *1933 c 405 s 54; 1973 c 492 s 14 (2394-54)*

**290.60** [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 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. The commissioner

may disclose information from withholding tax returns received from the taxpayer to the Minnesota department of economic security for purposes of auditing unemployment tax. Prior to the release of any information to any official of the United States or any other state or the department of economic security 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.

In order to facilitate processing of returns and payments of taxes required by this chapter, the commissioner may contract with outside vendors and may disclose private and nonpublic data to the vendor. The data disclosed will be administered by the vendor consistent with this section.

**History:** *1933 c 405 s 56; Ex1937 c 49 s 31; 1941 c 18 s 5; 1977 c 387 s 2; 1978 c 621 s 1; 1979 c 14 s 1; 1981 c 270 s 127; 1981 c 343 s 23; 1982 c 416 s 2; 1982 c 523 art 20 s 1 (2394-56)*

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.

## 290.611 DISCLOSURE OF CONTENTS OF TAX RETURNS PROHIBITED IN CERTAIN INSTANCES; PENALTY.

Subdivision 1. No person who prepares, aids in the preparation, processes, consults with respect to or reviews a state or federal tax return for another person, corporation, partnership, association or other taxpayer shall divulge any particulars of such return, except to authorized employees of the department of revenue or of the Internal Revenue Service in the course of an examination, without the written permission of such person, corporation, partnership, association or other taxpayer or the legally appointed representative of such taxpayer if such taxpayer is deceased, incompetent or otherwise unable to give such consent. The provisions of this subdivision shall not apply to disclosure by an employee of the department of revenue or of the Internal Revenue Service to other employees of such department or service where such disclosure is necessary for the effective administration of the tax laws of the state or the federal government.

Subd. 2. The provisions of this section shall not prohibit the furnishing of information by any tax return preparer to a tax return processor for the purpose of obtaining computer services in the preparation of the return.

Subd. 3. The provisions of this section shall not prohibit the furnishing of information by an owner or employee of a business firm to any other owner or employee of the same business firm, whether or not such other person became an owner or employee after such information was received.

Subd. 4. This section shall not be construed to limit the disclosure of tax returns, records, or information to the purchaser, and his employees, in the event of the sale of a business where such business includes the preparation of state or federal income tax returns.

Subd. 5. Any person disclosing any particulars of any tax return, without the written consent of the taxpayer making such return, in violation of the provisions of this section, is guilty of a gross misdemeanor.

**History:** *1971 c 788 s 1,2; 1973 c 66 s 1; 1973 c 582 s 3*

## 290.612 INQUIRIES RELATED TO APPLICATIONS FOR LIQUOR LICENSES.

Any county or municipality may request the commissioner of revenue to certify whether or not an applicant for a license to be issued pursuant to section 340.01 or 340.13 is liable for any state or local taxes or assessments which were not paid when they became due. Upon a request from a county or municipality, the commissioner shall certify to the county or municipality the information requested, but shall not certify that the license applicant is liable for any unpaid state or local taxes or assessments if an administrative or court action which questions the amount or validity of the unpaid taxes or assessments has been commenced, or if the appeal period to contest the taxes or assessments has not yet expired.

**History:** *1978 c 621 s 2*

**290.62** MS 1965 [Repealed, Ex1967 c 48 s 91]

## 290.62 DISTRIBUTION OF REVENUES.

All revenues derived from the taxes, interest, penalties and charges under this chapter shall, notwithstanding any other provisions of law, be paid into the state treasury and credited to the general fund, and be distributed as follows:

(1) There shall, notwithstanding any other provision of the law, be paid from this general fund all refunds of taxes erroneously collected from taxpayers under this chapter as provided herein;

(2) There is hereby appropriated to the persons entitled to payment herein, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

**History:** *Ex1967 c 48 s 90; 1969 c 399 s 28; Ex1971 c 31 art 20 s 9; 1980 c 419 s 25*

**290.621** [Temporary]

**290.623** [Repealed, 1947 c 633 s 22]

**290.65 TIME LIMITS; PENALTIES.**

Subdivision 1. [Repealed, 1977 c 423 art 1 s 15]

Subd. 2. [Repealed, 1982 c 523 art 40 s 15]

Subd. 3. [Repealed, 1982 c 523 art 40 s 15]

Subd. 4. [Repealed, 1982 c 523 art 40 s 15]

Subd. 5. [Repealed, 1982 c 523 art 40 s 15]

Subd. 6. [Repealed, 1982 c 523 art 40 s 15]

Subd. 7. [Repealed, 1982 c 523 art 40 s 15]

Subd. 8. [Repealed, 1980 c 419 s 46]

Subd. 9. **Time limits, additional extension in certain cases.** The limitations of time provided by this chapter relating to income taxes, and chapter 271 relating to the tax court, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the tax court from orders relating to income taxes, and (f) appealing to the supreme court from decisions of the tax court relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is serving in the Armed Forces of the United States, or serving in support of the Armed Forces and as provided in section 7508 of the Internal Revenue Code of 1954, as amended through December 31, 1981, is serving in an area designated by the president as a combat zone or is hospitalized outside the United States as a result of injury received while serving in the combat zone during such time, and for a further period of six months.

Subd. 10. **Interest, penalties; additional extension.** No interest upon any income tax shall be assessed or collected from any individual, and no interest shall be paid upon any income tax refund to any individual, with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 9. No penalty shall be assessed or collected from any such individual by reason of failure during such period to perform any act required by the laws described in subdivision 9.

Subd. 11. **Time limit for assessment, additional extension.** The limitations of time provided for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 9, are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided.

Subd. 12. **Time limit for acts unaffected by additional extension.** Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 9, within which any act is required or permitted to be done.

Subd. 13. **Time for acts; effect of appointment of personal representative, guardian; additional extension.** The provisions of subdivision 9 shall not extend the time for performing any of the acts therein set forth beyond the expiration of

three months after the appointment of a personal representative, or guardian, in this state, for any individual described therein except as provided in subdivision 16.

Subd. 14. [Repealed, 1980 c 419 s 46]

Subd. 15. [Repealed, 1980 c 419 s 46]

Subd. 16. **Death while in military service.** In the case of any individual who dies while in active service as a member of the military or naval forces of the United States or of any of the United Nations, any income tax imposed under the provisions of this chapter shall not be imposed with respect to the taxable year in which falls the date of his death, and such tax imposed for any prior taxable year which is unpaid at the date of his death (including additions to the tax, interest and penalties) shall not be assessed, and if assessed, the assessment shall be abated. In addition, upon the filing of a claim for refund within seven years from the date the return was filed, the tax paid or collected with respect to any taxable year beginning after December 31, 1949, during which such decedent was in active service shall be refunded.

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

**History:** *1943 c 107 s 1; 1945 c 604 s 15; 1947 c 635 s 17; 1951 c 648 s 1-3; 1965 c 51 s 62,63; 1965 c 698 s 3; 1967 c 76 s 1; 1971 c 45 s 1; 1973 c 582 s 3; 1975 c 349 s 30; 1976 c 134 s 78; 1977 c 307 s 29; 1980 c 419 s 26-30; 1982 c 523 art 1 s 48,49*

**290.66** [Repealed, 1980 c 419 s 46]

**290.67** [Repealed, 1965 c 45 s 73]

**290.68** [Repealed, 1980 c 419 s 46]

**290.69** [Repealed, 1980 c 419 s 46]

## 290.91 DESTRUCTION OF RETURNS.

The commissioner of revenue is hereby authorized to destroy all tax returns, required under this chapter or chapter 290A, including audit reports, orders and correspondence relating thereto, which have been on file in his office for a period to be determined by the commissioner. The commissioner may, in his discretion, make copies of such returns, orders or correspondence by microfilm, photostat or other similar means and may immediately destroy the original documents from which such copies have been made. Such copies, when certified to by the commissioner, shall be admissible in evidence in the same manner and be given the same effect as the original documents destroyed.

The commissioner may, in his discretion, destroy correspondence and documents contained in the files of the division which do not relate specifically to any tax return.

Notwithstanding the above provisions (or the provisions of section 290.61 or 290A.17) the commissioner may, utilizing such safeguards as he in his discretion deems necessary, (1) employ a commercial photographer for the purpose of developing microfilm of returns or other documents, or (2) employ a vendor for the purpose of obtaining the vendor's services an example of which is the preparation of income tax return labels.

**History:** *1945 c 604 s 27; 1947 c 92 s 1; 1965 c 398 s 1; 1967 c 120 s 1; 1973 c 582 s 3; 1982 c 523 art 1 s 50*

## 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, 1981.

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

Subd. 2a. **Collection at source.** (1) **Deductions.** Every employer making payment of wages shall deduct and withhold upon such wages a tax as provided in this section.

(2) **Withholding on payroll period.** The employer shall withhold the tax on the basis of each payroll period or as otherwise provided in this section.

(3) **Withholding tables.** Unless the amount of tax to be withheld is determined as provided in subdivision 3, the amount of tax to be withheld for each individual shall be based upon tables to be prepared and distributed by the commissioner. The tables shall be computed for the several permissible withholding periods and shall take account of exemptions allowed under this section; and the amounts computed for withholding shall be such that the amount withheld for any individual during his taxable year shall approximate in the aggregate as closely as possible the tax which is levied and imposed under this chapter for that taxable year, upon his salary, wages, or compensation for personal services of any kind for

the employer, and shall take into consideration the allowable deduction for federal income tax and the deduction allowable under section 290.09, subdivision 15, and the personal credits allowed against the tax.

(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 rule for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes. 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, 1981, 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, 1981 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.

Subd. 2b. [Expired]

Subd. 3. **Withholding, irregular period.** If payment of wages is made to an employee by an employer

(a) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employees by such employer, or

(b) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(c) With respect to a period beginning in one and ending in another calendar year, or

(d) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of or pays, the wages payable by another employer to such employee.

The manner of withholding and the amount to be deducted and withheld under subdivision 2a shall be determined in accordance with regulations prescribed by the commissioner under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

Subd. 4. **Remuneration, when not "wages".** If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

Subd. 4a. **Tax withheld from nonresidents.** (1) **"Wages" paid to nonresident employees.** For the purposes of this section: The term "wages" means all remuneration taxable under this chapter including all remuneration paid to a nonresident employee for services performed in this state.

(2) **"Employer", "wages" and "employee" concerning nonresidents.** Notwithstanding any other provision of this section, under rules and regulations to be prescribed by the commissioner of revenue, for purposes of this section any person having control, receipt, custody, disposal or payment of compensation taxable under this chapter and earned by a nonresident for personal services, shall be deemed an employer, any compensation taxable under this chapter and earned by a nonresident for personal services shall be deemed wages, and a nonresident entitled to compensation taxable under this chapter and earned by him for personal services shall be deemed an employee.

When compensation for personal services is paid to a corporation in which all or substantially all of the shareholders are individual entertainers, performers or athletes who gave an entertainment or athletic performance in this state for which the compensation was paid, the compensation shall be deemed wages of the individual entertainers, performers or athletes and shall be subject to the provisions of this section. Advance payments of compensation for personal services to be performed in Minnesota shall be deemed wages and subject to the provisions of this section. The individual, and not the corporation, shall be subject to the Minnesota income tax as provided in this chapter on the compensation for personal services.

(3) **Nonresidents, employer's duty.** The employer of any employee domiciled in a state with which Minnesota has reciprocity under section 290.081 is not required to withhold under this chapter from the wages earned by such employee in this state.

Subd. 5. **Exemptions.** (1) **Entitlement.** An employee receiving wages shall on any day be entitled to 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.** The provisions concerning exemption certificates contained in section 3402(f)(2) and (3) of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall apply.

(3) **Form of certificate.** Withholding exemption certificates shall be in such form and contain such information as the commissioner may by regulation prescribe.

(4) **Number may be same as that for federal purposes.** Notwithstanding the provisions of this subdivision, an employee may elect to claim a number not to exceed the 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 14 or a number prescribed by the commissioner, or

(b) a status that would exempt the employee from Minnesota withholding, including where 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 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 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 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.

(8a) The period of time during which a tax must be assessed or collection proceedings commenced under this subdivision shall be suspended during the period from the date of filing of a petition in bankruptcy until 30 days after the commissioner of revenue receives notice that the bankruptcy proceedings have been closed or dismissed or the automatic stay has been terminated or has expired.

The suspension of the statute of limitations under this subdivision shall apply to the person against whom the petition in bankruptcy is filed and all other persons who may also be wholly or partially liable for the tax under this chapter.

(9) 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.

(10) No suit shall lie to enjoin the assessment or collection of any tax imposed by this section, or the interest and penalties added thereto.

Subd. 6a. **Failure to comply with withholding provisions.** (a) Whenever any person who is required to deduct, withhold, pay over, or deposit any tax imposed by this chapter, at the time and in the manner prescribed by law or regulations fails to deduct, withhold, or pay over such tax, or fails to make deposits or payments of such tax and is notified of any such failure by notice served upon him in the manner prescribed for service of a summons in civil actions, then all the requirements of paragraph (b) of this subdivision shall be complied with. In the case of a corporation, partnership or trust, notice served upon an officer, partner or trustee shall, for purposes of this subdivision, be deemed to be notice served upon such corporation, partnership or trust and all officers, partners or trustees thereof.

(b) Any person who is required to deduct, withhold, pay over, or deposit any tax imposed by this chapter, if notice has been served upon such person in accordance with paragraph (a) of this subdivision, shall thereafter deduct, withhold and collect such taxes and shall (not later than the end of the second banking day after any amount of such taxes is deducted, withheld or collected) deposit such taxes in a separate account in a bank, savings bank or savings and loan association and shall keep the amount of such taxes in such account until payment over to the state of Minnesota. Any such account shall constitute and be designated as a special fund in trust for the state of Minnesota payable to the state of Minnesota by such person as trustee. It shall be the duty of such person upon whom such notice is served to notify the commissioner of revenue in writing of the name and address of the bank, savings bank or savings and loan association wherein such account is kept, together with such other information as the commissioner may require.

(c) Whenever the commissioner of revenue is satisfied with respect to any notification made under paragraph (a) of this subdivision that all requirements of

law and regulations with respect to the taxes imposed by this chapter have been and will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation. All notices authorized or required under this subdivision shall be in such form as the commissioner may determine.

(d) Any person who fails to comply with any provisions of this subdivision shall, in addition to any other penalties provided by law, be guilty of a gross misdemeanor, except that the provisions of this paragraph shall not apply

(1) to any person if such person shows that there was reasonable doubt as to (a) whether the law required deduction, withholding or payment of tax or (b) what person was required by law to deduct, withhold or pay; or

(2) to any person, if such person shows that the failure to comply with the provisions of paragraph (b) of this subdivision is due to circumstances beyond his control. A lack of funds existing immediately after the payment of wages (whether or not created by such payment) shall not be considered to be circumstances beyond the control of a person.

Subd. 7. **Withholding statement to employee or payee and to commissioner.** (1) Every person required to deduct and withhold from an employee a tax under subdivision 2a or subdivision 3, or who would have been required to deduct and withhold a tax under subdivision 2a or subdivision 3, determined without regard to subdivision 19, if the employee had claimed no more than one withholding exemption, 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.

Subd. 8. **Employer liable for tax withheld.** The employer shall be liable for the payment of the tax required to be deducted and withheld under subdivision 2a or subdivision 3, and shall not be liable to any person for the amount of any such payment.

Subd. 9. **Determination of tax due.** The commissioner may grant permission to employers, who do not desire to use the withholding tax tables provided in accordance with paragraph (3) of subdivision 2a, to determine the amount of tax to be withheld by use of a method of withholding other than withholding tax tables, provided such method will withhold from each employee substantially the same amount of tax as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the commissioner before the beginning of a payroll period for which the employer desires to withhold the tax by such other method. Applications to use such other method must be accompanied by evidence establishing the need for the use of such method.

Subd. 10. **Remuneration, not in cash.** In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this section with respect to such remuneration, provided that such employer files with the commissioner such information with respect to such remuneration as the commissioner may by regulation prescribe.

Subd. 11. **Refunds.** Where there has been an overpayment of tax imposed by this section, refund of such overpayment or credit shall be made to the employer in accordance with regulations prescribed by the commissioner, but only to the extent that the amount of such overpayment was not deducted and withheld under subdivision 2a or subdivision 3 by the employer. Any overpayment which is refunded shall bear interest at the rate of six percent per annum, computed from the date of payment until the date the refund is paid to the employer. The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62 and so much of said fund as may be necessary is hereby appropriated for that purpose. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

Subd. 12. **Withheld amount, credit against tax.** The amount deducted and withheld as tax under subdivision 2a or subdivision 3 during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the taxes imposed by this chapter, for a taxable year beginning in such calendar year. If more than one taxable year begins in such calendar year, such amount shall be allowed as a credit against the taxes for the last taxable year so beginning.

Subd. 13. **Refunds.** (1) Where the amount of the tax withheld at the source under subdivision 2a or subdivision 3 exceeds by $1 or more the taxes (and any added penalties and interest) reported in the return of the employee taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the employee taxpayer. If the amount of such excess is less than $1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds $10, such amount on the original return shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the employee taxpayer or (b) the date on which his return is filed, whichever is later, to the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the employee taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest, to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Subd. 14. **Records must be kept.** Every person liable for any tax imposed by this section, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such regulations, as the commissioner may from time to time prescribe. Any such return or statement shall include therein the information required by such regulations and by the forms prescribed by the commissioner. For the purpose of determining compliance with the provisions of this subdivision, or for the purpose of collection of any taxes due under this section, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determination, whether such books, papers, records, or memoranda are the property of or in the possession of such person or any other person or corporation. The commissioner shall further have power to require the attendance of any persons having knowledge or information in the premises, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 15. **Penalties.** (1) If any tax required to be deducted and withheld under subdivision 2a or subdivision 3, or any portion thereof, is not paid to or deposited with the commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to ten percent of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid or deposited until paid. Where an extension of time for payment has been granted under the provisions of subdivision 6, interest shall be paid at the rate specified in section 270.75 from the date when such payment or deposit should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this subdivision shall apply.

(2) In the case of any failure to withhold a tax on wages, make and file quarterly returns or make payments to or deposits with the commissioner of amounts withheld, as required by this section, within the time prescribed by law, there shall be added to the tax in lieu of the penalty provided in paragraph (1) a penalty equal to ten percent of the amount of tax that should have been properly withheld and paid over to or deposited with the commissioner if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. The amount 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.

(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 may, in the discretion of the commissioner of revenue, be credited first to the oldest liability not secured by a judgment or lien, but in all cases 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 $500 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 section 26, 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.

Subd. 17. **Reciprocal arrangement with other states.** The commissioner may enter into an agreement with the commissioner or other taxing officials of another state for the interpretation and administration of the acts of their several states providing for the collection of income tax at source on wages for the purpose of promoting fair and equitable administration of such acts and to eliminate duplicate withholding. Notwithstanding the provisions of section 290.61 the commissioner at his discretion may furnish information on a reciprocal basis to the taxing officials of another state in order to implement the purposes set forth above.

Subd. 18. **Returns; confession of judgment.** Any return that is required to be filed with the commissioner of revenue under this section shall (a) contain a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, and (b) shall contain a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

Subd. 19. **Employees incurring no income tax liability.** Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate, in such form and containing such other information as the commissioner may prescribe, furnished to the employer by the employee certifying that the employee

(a) incurred no liability for income tax imposed under this chapter for his preceding taxable year, and

(b) anticipates that he will incur no liability for income tax imposed under this chapter for his current taxable year. When an employee anticipates no liability for the current taxable year because of the 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, 1981.

(b) The commissioner is authorized by regulations to provide for withholding

(1) from remuneration for services performed by an employee for his employer which (without regard to this subdivision) does not constitute wages, and

(2) from any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this section, if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may by regulations provide. For purposes of this section remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

Subd. 21. **Extension of withholding to unemployment compensation benefits.** For purposes of this section, any supplemental unemployment compensation benefit paid to an individual to the extent includable in such individual's Minnesota adjusted gross income, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

Subd. 22. **Liability of third parties paying or providing for wages.** (a) For purposes of this section, if a lender, surety, or other person, who is not an employer with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable to the commissioner in a sum equal to the taxes required to be deducted and withheld from such wages by such employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this section to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable personally to the commissioner in a sum equal to the taxes which are not paid over to the commissioner by such employer with respect to such wages.

(c) For purposes of this subdivision, a person shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the person had exercised due diligence. A person exercises due diligence if he maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the person to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(d) Any amounts paid to the commissioner pursuant to this subdivision shall be credited to the liability of the employer.

Subd. 23. **Withholding by employer of delinquent taxes.** (1) The commissioner may, within five years after the taxes should have been paid or the return is filed, whichever is later, give notice to any employer deriving income which has a taxable situs in this state regardless of whether the income is exempt from taxation,

that an employee of that employer is delinquent in a certain amount with respect to any state taxes, including penalties, interest and costs. The commissioner can proceed under this subdivision only if the tax is uncontested or if the time for appeal of the tax has expired. The commissioner shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer, at his last known address, a written notice of (a) the amount of taxes, interest, and penalties due from the taxpayer and demand for their payment, and (b) the commissioner's intention to require additional withholding by the taxpayer's employer pursuant to this subdivision. The effect of the notice shall expire 180 days after it has been mailed to the taxpayer provided that the notice may be renewed by mailing a new notice which is in accordance with this subdivision. The renewed notice shall have the effect of reinstating the priority of the original claim. The notice to the taxpayer shall be in substantially the same form as that provided in section 571.41. The notice shall further inform the taxpayer of the wage exemptions contained in section 550.37, subdivision 14. If no statement of exemption is received by the commissioner within 30 days from the mailing of the notice, he may proceed under this subdivision. The notice to the taxpayer's employer may be served by mail or by delivery by an employee of the department of revenue and shall be in substantially the same form as provided in section 571.495. Upon receipt of notice, the employer shall withhold from compensation due or to become due to the employee, the total amount shown by the notice, subject to the provisions of section 571.55. The employer shall continue to withhold each pay period until the total amount shown by the notice is paid in full. Upon receipt of notice by the employer, the claim of the state of Minnesota shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and the employee for withholding a portion of the total amount due the employee each pay period, until the total amount shown by the notice plus accrued interest has been withheld.

The "compensation due" any employee is defined in accordance with the provisions of section 571.55. The maximum withholding allowed under this subdivision for any one pay period shall be decreased by any amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the department of the amounts and the facts relating to such assignments within ten days after the service of the notice of delinquency on the form provided by the department of revenue as noted in this subdivision. In crediting amounts withheld against delinquent taxes of an employee, the department shall apply amounts withheld in the following order: penalties, interest, tax and costs.

(2) If the employee ceases to be employed by the employer before the full amount set forth in a notice of delinquency plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount withheld. No employer may discharge any employee by reason of the fact that the commissioner has proceeded under this subdivision. If an employer discharges an employee in violation of this provision, the employee shall have the same remedy as provided in section 571.61, subdivision 2.

(3) The employer shall, by the date prescribed in subdivision 6, remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during the calendar quarter under this subdivision. Should any employer, after notice, willfully fail to withhold in accordance with the notice and this subdivision, or willfully fail to remit any amount withheld as required by this subdivision, the employer shall be liable for the total amount set forth in the notice

together with accrued interest which may be collected by any means provided by law relating to taxation. No amount required to be paid by an employer by reason of his failure to remit under this subdivision, may be deducted from the gross income of the employer, under sections 290.09, subdivision 4 or 290.01, subdivisions 20 to 20f. Any amount collected from the employer for failure to withhold or for failure to remit under this subdivision shall be credited to the employee's account in the following manner: penalties, interest, tax and costs.

(4) Clauses (1), (2) and (3), except provisions imposing a liability on the employer for failure to withhold or remit, shall apply to cases in which the employer is the United States or any instrumentality thereof or this state or any municipality or other subordinate unit thereof.

(5) The commissioner shall refund to the employee excess amounts withheld from him under this subdivision. If any excess results from payments by the employer because of willful failure to withhold or remit as prescribed in clause (3) above, the excess attributable to the employer's payment shall be refunded to the employer.

(6) Employers required to withhold delinquent taxes, penalties, interest and costs under this subdivision shall not be required to compute any additional interest, costs or other charges to be withheld.

(7) The collection remedy provided to the commissioner by this subdivision shall have the same legal effect as if it were a levy made pursuant to section 270.70.

Subd. 24. **Application for account number.** An employer desiring to engage in business in Minnesota shall file with the commissioner an application for a withholding account number on or before the due date of the first payment required to be made under the provisions of subdivision 6. An application for an account number shall be made upon a form prescribed by the commissioner and shall set forth the name of the employer, the location of the place or places of business, the names, addresses and social security numbers of the owners or partners, or if the employer is a corporation of the officers, or if the employer is a trust of the trustees, and such other information as the commissioner may require. The application shall be filed by the owner if the employer is a natural person; by a member or partner if the employer is an association or partnership; by a trustee if the employer be a trust, or by a person authorized to sign the application if the employer is a corporation.

No fee shall be charged for the application.

The account number is not assignable.

An employer who fails to file an application for a withholding account number shall be liable to the commissioner for a penalty of $100. The penalty shall be collected in the same manner as delinquent withholding tax is collected. The commissioner may abate this penalty.

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:** *1961 c 213 art 1 s 1; Ex1961 c 91 art 2 s 1-3,7; 1963 c 355 s 15-17; 1963 c 666 s 1,2; 1965 c 464 s 2; 1965 c 884 art 1 s 7; 1967 c 42 s 2; 1967 c 587 s 1; 1967 c 902 s 1; Ex1967 c 32 art 14 s 11; 1969 c 97 s 5; 1969 c 325 s 7-9; 1969 c 326 s 1; 1969 c 399 s 29,30; 1969 c 654 s 1; 1971 c 55 s 2; 1971 c 147 s 1,2; 1971 c 510 s 1; 1971 c 514 s 1; 1971 c 729 s 1; 1971 c 769 s 2; Ex1971 c 31 art 18 s 5; 1973 c 73 s 1-8; 1973 c 492 s 14; 1973 c 501 s 4-12; 1973 c 582 s 3; 1973 c 711 s 3; 1974 c 60 s 1; 1975 c 349 s 21,22,29; 1975 c 377 s 14,15; 1976 c 2 s 110; 1976 c 181 s 2; 1977 c 111 s 1,2; 1977 c 258 s 1; 1977 c 386 s 8; 1978 c 766 s 8; 1980 c 419 s 31-34; 1980 c 607 art 1 s 32; 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; 1982 c 523 art 1 s 51-55; art 2 s 36-38; art 28 s 4; art 40 s 10,14*

**290.921** [Repealed, 1978 c 721 art 5 s 1]
**290.922** [Repealed, 1978 c 721 art 5 s 1]

**290.93 DECLARATION OF ESTIMATED TAX.**

Subdivision 1. **Requirement of declaration.** (1) Every individual shall, at the time prescribed in subdivision 5 of this section, make and file with the commissioner a declaration of his estimated tax for the taxable year if

(a) The gross income (for purposes of this subdivision and subdivision 5 as defined in section 290.37, subdivision 1, clause (c)) 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) is less than $200 for taxable years beginning after December 31, 1981, $300 for taxable years beginning after December 31, 1982, $400 for taxable years beginning after December 31, 1983, and $500 for taxable years beginning after December 31, 1984.

Subd. 2. **Joint declaration.** A joint declaration may be made by husband and wife, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if they are separated under a decree of legal separation or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife or may be divided between them.

Subd. 3. **Estimated tax defined.** For purposes of this section, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the sum of the taxes imposed by this chapter (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.

Subd. 4. **Commissioner to prescribe declaration.** The declaration shall be in such form and shall contain such information as the commissioner may prescribe.

Subd. 5. **Date required.** (1) Declarations of estimated tax required by subdivision 1 from individuals other than farmers shall be filed on or before April 15 of each taxable year, except that if the requirements of subdivision 1 are first met

(a) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(b) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(c) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) Declarations of estimated tax required by subdivision 1 from individuals whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in paragraph (1) be filed at any time on or before January 15 of the succeeding taxable year.

(3) An individual shall make amendments of a declaration filed during the taxable year, under regulations prescribed by the commissioner.

(4) If on or before January 31 (or March 1, in the case of an individual referred to in paragraph (2)) of the succeeding taxable year the taxpayer files a

return for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the commissioner

(a) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(b) If the tax shown on the return is greater than the estimated tax shown in the declaration previously made or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by paragraph (3) to be filed on or before January 15.

(5) The commissioner may grant a reasonable extension of time for filing the declaration and paying the estimated tax. Except in the case of a taxpayer who is outside the 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 the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(c) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by subdivision 5(1) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(d) If the declaration is filed after September 15 of the taxable year, and is not required by subdivision 5(1) or (2) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(e) If the declaration is filed after the time prescribed in subdivision 5(1) or (2) including cases in which an extension of time for filing the declaration has been granted under subdivision 5(5), subparagraphs (b), (c), and (d) of this paragraph shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subdivision 5(1) or (2), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(2) If an individual referred to in subdivision 5(2) (relating to income from farming) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(3) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect such increase or decrease in the estimated tax by reason of such amendment, and if such amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(4) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(5) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the taxes imposed upon the individual by this chapter, for the taxable year.

Subd. 7. **Fiscal year.** The application of this section to taxable years beginning other than January 1, and to taxable years of less than 12 months, shall be made pursuant to regulations issued by the commissioner.

Subd. 8. **Exception, estates and trusts.** The provisions of this section shall not apply to an estate or trust.

Subd. 9. **Overpayment of estimated tax.** (1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments plus (a) the total amount of tax withheld at the source under section 290.92, subdivision 2a or subdivision 3 (if any) and (b) and other payments (if any) exceeds by $1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than $1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds $10, such amount on the original return shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Subd. 10. **Underpayment of estimated tax.** (1) In the case of any underpayment of estimated tax by an individual, except as provided in paragraph (4), there may be added to and become a part of the taxes imposed by this chapter, for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment for the period of the underpayment.

(2) For purposes of the preceding paragraph, the amount of underpayment shall be the excess of

(a) The amount of the installment which would be required to be paid if the estimated tax were equal to 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.

(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 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 refundable credits contained in sections 290.06, subdivision 13, 290.067, 290.501, and chapter 290A which are allowed against income tax liability, and the amount of such credits for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amounts 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.

Subd. 11. **Failure to pay.** Any individual required under this section to pay any estimated tax, who wilfully fails to pay such estimated tax at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a gross misdemeanor.

Subd. 12. [Repealed, 1980 c 419 s 46]

**History:** *1961 c 213 art 1 s 2; Ex1961 c 91 art 2 s 4; 1963 c 355 s 18; 1969 c 6 s 35,36; 1969 c 325 s 10; 1969 c 399 s 31,32; 1971 c 36 s 1; 1973 c 19 s 1; 1973 c 43 s 1; 1973 c 273 s 1,2; 1973 c 492 s 14; 1975 c 377 s 16; 1978 c 772 s 62; 1980 c 419 s 35,36; 1981 c 178 s 108,109; 1981 c 343 s 30-32; 1982 c 523 art 1 s 56-58; art 40 s 11*

## 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.

Subd. 2. [Repealed, 1975 c 349 s 31]

Subd. 3. **Contents of declaration.** The declaration shall contain such pertinent information as the commissioner may by forms or regulations prescribe.

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

Subd. 5. **Short taxable year.** A corporation with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the commissioner.

**History:** *1965 c 884 art 2 s 1; 1975 c 349 s 23; 1980 c 419 s 37; 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 |

Subd. 2. **Amendment.** An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval.

Subd. 3. [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.

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

**History:** *1965 c 884 art 2 s 2; 1980 c 419 s 38; 1981 c 178 s 110,111*

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

Subdivision 1. **Amount and time for payment of each installment.** The amount of estimated tax with respect to which a declaration is required under section 290.931 shall be paid as follows:

(1) **Payment in four installments.** If the declaration is filed on or before the 15th day of the 3rd month of the taxable year, the estimated tax shall be paid in four equal installments on the 15th day of the 3rd, 6th, 9th and 12th month of the taxable year.

(2) **Payment in three installments.** If the declaration is filed after the 15th day of the 3rd month and not after the 15th day of the 6th month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such 3rd month, the estimated tax shall be paid in three equal installments on the 15th day of the 6th, 9th and 12th month of the taxable year.

(3) **Payment in two installments.** If the declaration of estimated tax is filed after the 15th day of the 6th month and not after the 15th day of the 9th month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such 6th month, the estimated tax shall be paid in two equal installments on the 15th day of the 9th and 12th month of the taxable year.

(4) **Payment in one installment.** If the declaration of estimated tax is filed after the 15th day of the 9th month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such 9th month, the estimated tax shall be paid in one installment.

(5) **Late filing.** If the declaration is filed after the time prescribed in section 290.932, subdivision 1 (determined without regard to any extension of time for filing the declaration under section 290.932, subdivision 4), paragraphs (2), (3), and (4) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 290.932, subdivision 1, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

Subd. 2. **Amendment of declaration.** If any amendment of a declaration is filed, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased (as the case may be), by the amount computed by dividing

(1) the difference between (A) the amount of estimated tax required to be paid before the date on which the amendment is made, and (B) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by

(2) the number of installments remaining to be paid on or after the date on which the amendment is made.

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

Subd. 4. **Installments paid in advance.** At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

**History:** *1965 c 884 art 2 s 3; 1975 c 349 s 24*

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

Subdivision 1. **Addition to the tax.** In case of any underpayment of estimated tax by a corporation, except as provided in subdivision 4, there shall be added

to the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment (determined under subdivision 2) for the period of the underpayment (determined under subdivision 3).

Subd. 2. **Amount of underpayment.** For purposes of subdivision 1, the amount of the underpayment shall be the excess of

(1) the amount of the installment, over

(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

Subd. 3. **Period of underpayment.** The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier

(1) The 15th day of the third month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision 2(1) for such installment date.

Subd. 4. **Exception.** (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.

(3) (A) An amount equal to the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) for the first two months of the taxable year, in the case of the installment required to be paid in the third month,

(ii) for the first two months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

(iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month, and

(iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by

(i) multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) dividing the resulting amount by the number of months in the taxable year (2, 5, 6, 8, 9, or 11, as the case may be) referred to in subparagraph (A).

(b) Notwithstanding clause (a) (1) and (2), 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 the applicable percentage 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. The term "applicable percentage" means 65 percent for taxable years beginning after April 30, 1982, 75 percent for taxable years beginning after December 31, 1982, and 80 percent for taxable years beginning after December 31, 1983.

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

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

Subd. 7. **Failure to file an estimate.** In the case of a corporation which fails to file an estimated tax for a taxable year when one is required, the period of the underpayment shall run from the four installment dates as set forth in section 290.933, subdivision 1, clause (1), to whichever of the periods set forth in subdivision 3, clauses (1) and (2), is the earlier.

**History:** *1965 c 884 art 2 s 4; 1971 c 96 s 1; 1975 c 377 s 17; 1977 c 386 s 9; 1981 c 60 s 22; 1981 c 343 s 34,35; 1982 c 523 art 40 s 12*

**290.935 PAYMENT ON ACCOUNT.**

Payment of the estimated tax or any installment thereof shall be considered payment on account of the taxes imposed by this chapter, for the taxable year.

**History:** *1965 c 884 art 2 s 5*

**290.936 OVERPAYMENT OF ESTIMATED TAX.**

(1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments and other payments, if any, exceeds by $1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than $1, the commissioner shall not be required to refund. Where any amount of such excess to be refunded exceeds $10, such amount on the original return shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

**History:** *1969 c 325 s 11; 1969 c 399 s 49; 1973 c 43 s 2; 1973 c 492 s 14; 1980 c 419 s 39; 1982 c 523 art 1 s 59*

**290.94** MS 1974 [Expired]
**290.95** [Repealed, 1980 c 419 s 46]
**290.96** [Repealed, 1980 c 419 s 46]

**290.97 CONTRACTS WITH STATE; WITHHOLDING.**

No department of the state of Minnesota, nor any political or governmental subdivision of the state shall make final settlement with any contractor under a contract requiring the employment of employees for wages by said contractor, until satisfactory showing is made that said contractor has complied with the provisions of section 290.92. A certificate by the commissioner of revenue shall satisfy this requirement.

**History:** *1961 c 213 art 1 s 6; 1973 c 582 s 3; 1980 c 419 s 40*

**290.971** 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. [Repealed, 1982 c 424 s 121; 1982 c 523 art 1 s 72]

**290.972** 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, 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]

**290.9725 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, 1981, 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; 1982 c 523 art 1 s 60*

**290.9726 CORPORATION TAXABLE INCOME TAXED TO SHAREHOLDERS.**

Subdivision 1. **General rule.** The gross income of the shareholders of corporations described in section 290.9725 shall be computed under the provisions of section 290.01, subdivisions 20 to 20f.

Subd. 2. **Character of items distributed or considered distributed.** The character of any item of income, gain, loss, or deduction included in shareholder's income shall be assignable as provided in section 290.17, subdivision 2, as if the item were realized directly from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation.

Subd. 3. **Exceptions.** No subtraction specified in section 290.01, subdivision 20b shall apply to any class of income which would be taxable to the corporation under the provisions of this chapter.

Subd. 4. **Treatment of family groups.** Any amount taxable to a shareholder may be apportioned or allocated by the commissioner between or among shareholders of the corporation who are members of the shareholder's family, as defined in section 290.10, clause (6), if he determines that the apportionment or allocation is necessary in order to reflect the value of services rendered to the corporation by the shareholders.

Subd. 5. **Credit allowances.** The credits provided in sections 290.06 and 290.501 to which the corporation is entitled shall be allocated to the shareholders in the same percentage as the undistributed income was apportioned under section 1373(b) of the Internal Revenue Code of 1954, as amended through December 31, 1981. The limitations set forth in the computation of the credit shall be applied to the shareholders.

Subd. 6. **Basis.** The adjustments to basis described in section 1376 of the Internal Revenue Code of 1954, as amended through December 31, 1981, shall not be made for any year beginning before January 1, 1981 for which the corporation did not have a valid election to be taxed as a small business corporation.

**History:** *1982 c 523 art 1 s 61*

**290.973** [Repealed, 1982 c 523 art 1 s 72]

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

Every electing small business corporation under section 290.9725 shall make a small business corporation 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, subdivisions 20 to 20f and 290.9725 as the commissioner may by forms and regulations prescribe.

**History:** *1961 c 457 s 4; 1981 c 344 s 3; 1982 c 523 art 1 s 62*

**290.975** [Repealed, 1981 c 344 s 4]
**290.981** [Repealed, 1977 c 423 art 2 s 20]
**290.982** [Repealed, 1977 c 423 art 2 s 20]
**290.983** [Repealed, 1977 c 423 art 2 s 20]
**290.984** [Repealed, 1977 c 423 art 2 s 20]
**290.985** [Repealed, 1977 c 423 art 2 s 20]
**290.986** [Repealed, 1977 c 423 art 2 s 20]
**290.987** [Repealed, 1977 c 423 art 2 s 20]
**290.988** [Repealed, 1977 c 423 art 2 s 20]
**290.989** [Repealed, 1977 c 423 art 2 s 20]
**290.99** [Repealed, 1977 c 423 art 2 s 20]
**290.991** [Repealed, 1977 c 423 art 2 s 20]
**290.992** [Repealed, 1977 c 423 art 2 s 20]