

## CHAPTER 290

### INCOME AND EXCISE TAXES

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#### 290.01 DEFINITIONS.

*[For text of subs 1 to 18, see M.S.1982]*

Subd. 19. **Net income.** The term "net income" means the gross income, as defined in subdivision 20, less the following deductions to the extent allowed by section 290.18, subdivision 1:

- (a) For corporations, the deductions allowed by section 290.09;
- (b) For individuals, the deductions allowed in section 290.088, without regard to section 290.18, subdivision 1, section 290.089, and 290.09; and
- (c) For estates and trusts, the deduction allowed by section 290.088, without regard to 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. The provisions of sections 205(a), 214 to 222, 231, 232, 236, 247, 251, 252, 253, 265, 266, 285, 288, and 335 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law Number 97-248, section 6(b)(2) and (3) of the Subchapter S Revision Act of 1982, Public Law Number 97-354, section 517 of Public Law Number 97-424, sections 101(c) and (d), 102(a), (aa), (f)(4), (g), (j), (l), 103(c), 104(b)(3), 105, 305(d), 306(a)(9) of Public Law Number 97-448, and sections 101 and 102 of Public Law Number 97-473 shall be effective at the same time that they become effective for federal income tax purposes. The Payment-in-Kind Tax Treatment Act of 1983, Public Law Number 98-4, shall be effective at the same time that it becomes effective for federal income tax purposes.

(v) The Internal Revenue Code of 1954, as amended through January 15, 1983, shall be in effect for taxable years beginning after December 31, 1982.

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

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) 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;

(3) 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;

(4) 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;

(5) 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 Minnesota Statutes 1982, section 290.01, subdivision 20b, clause (7);

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

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

(8) 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;

(9) 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;

(10) 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;

(11) 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;

(12) 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;

(13) 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 equity investment credit contained in section 290.069, subdivision 4, and to property acquired in exchange

for the release of the taxpayer's marital rights contained in section 290.14, clause (7);

(14) 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;

(15) 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);

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

(17) 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;

(18) Expenses and depreciation attributable to property subject to Laws 1982, chapter 523, article 7, section 3 which has not been registered;

(19) The amount of contributions to an individual retirement account, including a qualified voluntary employee contribution, simplified employee pension plan, or self-employed retirement plan which is allowed under sections 311 and 312 of Public Law Number 97-34, section 238 of Public Law Number 97-248, and section 103(d)(1)(B) of Public Law Number 97-448 to the extent those contributions were not an allowable deduction prior to the enactment of that law; and

(20) To the extent not included in the taxpayer's federal adjusted gross income, the amount of any contributions to a qualified pension plan, designated as employee contributions but which the employing unit picks up and which are treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code of 1954.

**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, (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, or (iii) severance pay distributed to an individual upon discontinuance of the individual's employment due to termination of business operations by the individual's employer, provided that the termination is reasonably likely to be permanent, involves the discharge of at least 75 percent of the employees at that site within a one-year period, and the business is not acquired by another person who continues operations at that site. 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. For purposes of this clause, "severance pay" means an amount received for cancellation of an employment contract or a collectively bargained termination payment made as a substitute for income which would have been earned for personal services to be rendered in the future. 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) 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;

(8) 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;

(9) 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;

(10) 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);

(11) 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);

(12) 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;

(13) 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;

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

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

(16) 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;

(17) 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;

(18) To the extent included in federal adjusted gross income, distributions from a qualified governmental pension plan which represent a return of designated employee contributions to the plan and which contributions were included in gross income pursuant to subdivision 20a, clause (20); and

(19) To the extent included in federal adjusted gross income, distributions from an individual retirement account which represent a return of designated employee contributions if the contributions were included in gross income pursuant to subdivision 20a, clause (19). The distribution shall be allocated first to return of contributions included in gross income until the amount of the contributions has been exhausted.

**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, as it existed prior to October

19, 1982, shall be made where the election under section 1372 of the Internal Revenue Code of 1954, as it existed prior to October 19, 1982, 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, as it existed prior to October 19, 1982, 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.

*[For text of subs 20d and 20e, see M.S.1982]*

**Subd. 20f. Modification for accelerated cost recovery system.** A modification shall be made for the allowable deduction under the accelerated cost recovery system. The allowable deduction for the accelerated cost recovery system as provided in section 168 of the Internal Revenue Code of 1954 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 of 1954 shall not be allowed.

(2)(a) For taxable years beginning after December 31, 1981, and before January 1, 1983, for 15-year real property as defined in section 168 of the Internal Revenue Code of 1954, 40 percent of the allowance provided in section 168 of the Internal Revenue Code of 1954 shall not be allowed and for all other property, 17 percent of the allowance shall not be allowed.

(b) For taxable years beginning after December 31, 1982, and with respect to property placed in service in taxable years beginning before January 1, 1983, for 15-year real property as defined in section 168 of the Internal Revenue Code of 1954, 40 percent of the allowance provided in section 168 of the Internal Revenue Code of 1954 shall not be allowed and for all other property 20 percent of the allowance shall not be allowed.

(3) For property placed in service in taxable years beginning after December 31, 1982, the allowable deduction shall be the amount provided by section 168 of the Internal Revenue Code of 1954.

(4) 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 of 1954, the modifications provided in clauses (1) and (2) do not apply.

(5) For property subject to the modifications contained in clause (1) or (2) above or subject to a reduction in basis pursuant to section 48(q) of the Internal Revenue Code of 1954, 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 of 1954 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.

(6) The basis of property to which section 168 of the Internal Revenue Code of 1954 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 of 1954 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 of 1954 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 (5).

(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.

(8) After the entire amount of the allowable deduction for that property under the provisions of section 168 of the Internal Revenue Code of 1954 has been obtained, the remaining depreciable basis in those assets for Minnesota purposes that is allowable under clause (5) shall include the amount of any basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code of 1954 to reflect the investment tax credit. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code of 1954.

*[For text of subds 21 and 22, see M.S.1982]*

Subd. 23. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subd 24, see M.S.1982]*

Subd. 25. [Repealed, 1983 c 15 s 33]

*[For text of subd 26, see M.S.1982]*

Subd. 27. [Repealed, 1983 c 342 art 1 s 44]

Subd. 28. [Repealed, 1983 c 207 s 44; 1983 c 342 art 1 s 44]

**History:** 3Sp1982 c 1 art 5 s 1,2; 1983 c 207 s 2-5; 1983 c 342 art 1 s 1-5

NOTE: Subdivision 20f was also amended by Laws 1983, chapter 207, section 6, to read as follows:

"Subd. 20f. **Modification for accelerated cost recovery system.** A modification shall be made for the allowable deduction under the accelerated cost recovery system. 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.

(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) 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.

(7) After the entire amount of the allowable deduction for that property under the provisions of section 168 of the Internal Revenue Code has been obtained, the remaining depreciable basis in those assets for Minnesota purposes that shall be allowed as provided in clause (4) shall include the amount of any basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code to reflect the investment tax credit. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code."



**290.012 DEFINITIONS.**

*[For text of subd 1, see M.S.1982]*

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, exceeds \$20,000 may qualify under this section.

*[For text of subds 3 and 4, see M.S.1982]*

**History:** 1983 c 216 art 1 s 48

**290.032 LUMP SUM DISTRIBUTION TAX.**

*[For text of subd 1, see M.S.1982]*

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.

The amount of any distribution from a qualified pension or profit sharing plan which is received as a lump sum distribution shall be reduced 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 for a taxable year beginning in 1974 or thereafter.

*[For text of subd 3, see M.S.1982]*

Subd. 5. [Repealed, 1983 c 342 art 1 s 44]

**History:** 1983 c 15 s 3

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

*[For text of subds 1 to 5, see M.S.1982]*

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 January 15, 1983.

*[For text of subd 7, see M.S.1982]*

**History:** 1983 c 207 s 7

**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, 290.20, 290.35, or 290.36, 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. 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 \$40,000 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.

*[For text of subd 2d, see M.S.1982]*

**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 any nonrefundable credits allowed by this chapter.

(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, 1985, 10 percent;

(3) For taxable years beginning after December 31, 1984, but before January 1, 1986, 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. 2f. Suspension of inflation adjustments.** (a) The taxable net income brackets, the personal credit amounts established pursuant to subdivision 3f and 3g, and the maximum standard deduction provided under section 290.089, subdivision 3, shall not be adjusted for inflation pursuant to subdivision 2d, for taxable years beginning during a calendar year if the following conditions occur:

(1) The legislature and the governor have enacted a budget providing for an appropriation to the budget reserve account of at least \$250,000,000 for the biennium during which the calendar year began or, in the second half of an odd-numbered year, for the biennium which began during the calendar year; and

(2) The commissioner of finance estimated at the time the budget is enacted that the state would receive sufficient general fund receipts during the biennium to fund the full appropriation to the budget reserve account; and

(3) On or before September 15 of the calendar year it is estimated by the commissioner of finance that the probable general fund receipts from taxes and other sources will be less than estimated and consequently the amount available for the remainder of the biennium after transferring any available funds in the budget reserve account will be less than the amount estimated or allotted to be expended or incurred from the general fund; and

(4) The additional receipts resulting from the suspension of the inflation adjustments, together with all other general fund revenues, are not estimated to exceed the sum of the amounts necessary to fund in full all appropriations, including the appropriation to the budget reserve account, in which case the commissioner of revenue shall provide for partial inflation adjustments sufficient to fund in full the appropriations.

(b) The suspension of inflation adjustments shall apply only during the biennium in which the conditions specified in paragraph (a) have been satisfied.

(c) For taxable years beginning during a calendar year in which the inflation adjustments of the brackets, credits, and maximum standard deduction are not made pursuant to this subdivision, the taxable net income adjustment factor, as defined in section 290.18, subdivision 4, shall be the adjustment factor applicable to taxable years beginning during the preceding calendar year. For taxable years beginning during a calendar year in which the inflation adjustments are suspended for one-half of the taxable year as a result of paragraph (b), the taxable net income adjustment factor shall be determined by multiplying the factor for the previous year by an amount equal to the current year factor minus one, divided by two, plus one.

(d) For taxable years beginning during a calendar year in which the inflation adjustments are suspended pursuant to this subdivision and for which paragraph (b) will result in the inflation adjustments being suspended for only one-half of the taxable year, the commissioner of revenue shall adjust the withholding tables,

notwithstanding section 290.92, subdivision 2a, so that the additional tax imposed is withheld and remitted by employers during the first six months of the taxable year as if the suspension were in effect for the entire year.

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 subdivision 2c as reduced by any nonrefundable credits provided in this chapter without the provisions of section 290.012 and this subdivision:

(1) 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.

*[For text of subs 3e to 3g, see M.S.1982]*

Subd. 9. [Repealed, 1983 c 342 art 1 s 44]

Subd. 9a. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subd 10, see M.S.1982]*

Subd. 11. **Contributions to political parties and candidates.** 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. 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, snowmobiles, or motorboats, 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), and (d) (1) to (3), 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.

*[For text of subd 15, see M.S.1982]*

**History:** 3Sp1982 c 1 art 5 s 3; 1983 c 15 s 4-7; 1983 c 216 art 2 s 6; 1983 c 301 s 178; 1983 c 342 art 1 s 6,7,11

#### **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, 1982, 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 \$720 in any taxable year, and the total credit for all dependents of a claimant shall not exceed \$1,440 in a taxable year. The total credit shall be reduced according to the amount of 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, 1982, of the claimant and his spouse, if any, as follows:

income up to \$10,000, \$720 maximum for one dependent, \$1,440 for all dependents;

income of \$10,001 to \$11,000, \$670 maximum for one dependent, \$1,340 for all dependents;

income of \$11,001 to \$12,000, \$620 maximum for one dependent, \$1,240 for all dependents;

income of \$12,001 to \$13,000, \$570 maximum for one dependent, \$1,140 for all dependents;

income of \$13,001 to \$15,000, \$520 maximum for one dependent, \$1,040 for all dependents;

income of \$15,001 to \$22,000, \$400 maximum for one dependent, \$800 for all dependents, reduced by five percent of the amount by which the income exceeds \$15,000, plus \$70;

income of \$22,001 to \$23,000, \$70 for one dependent, \$140 for all dependents;

income of \$23,001 to \$24,000, \$20 for one dependent, \$40 for all dependents;

\$24,001 and over, no credit.

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.

The commissioner shall construct and make available to taxpayers tables showing the amount of the credit at various levels of income and expenses. The tables shall follow the schedule contained in this subdivision, except that the commissioner may graduate the transitions between expenses and income brackets.

*[For text of subs 3 to 5, see M.S.1982]*

**History:** 1983 c 342 art 1 s 12,13

### **290.068 CREDIT FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.**

*[For text of subs 1 and 2, see M.S.1982]*

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 nonrefundable credits allowed under this chapter.

(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 an S corporation,

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. With respect to any portion of a credit carryback from a taxable year attributable to a loss carryback from a subsequent taxable year, the period of limitations shall be that period which ends with the expiration of the 15th day of the 46th month, or, in the case of a corporation, the 45th month following the end of the subsequent taxable year. 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. With respect to any portion of a credit carryback from a taxable year attributable to a loss carryback from a subsequent taxable year, interest shall be computed from the end of the subsequent taxable year.

**Subd. 4. Estates and trusts; partnerships.** In the case of 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.

*[For text of subd 5, see M.S.1982]*

**Subd. 6. Additional credit.** (a) In addition to the credit allowed by subdivision 1, a credit shall be allowed against the tax imposed by this chapter for the taxable year equal to 12.5 percent of the amount of qualified research expenses paid or incurred for qualified research performed by a Minnesota-domiciled corporation for or on behalf of one or more of its wholly-owned subsidiary corporations which has in effect during the taxable year a valid election under section 936 of the Internal Revenue Code, including any expenses paid or incurred that are attributable to a wholly-owned subsidiary corporation by reason of paragraph (h) of section 936 for purposes of determining each corporation's combined taxable income.

(b) The maximum credit allowed by clause (a) for the taxable year shall be the excess of

(1) the total amount of tax imposed by this chapter on all members of the unitary group for the taxable year, over

(2) the sum of (A) the total amount of tax which would be imposed on the unitary group, if the corporation or corporations with valid elections under section 936 of the Internal Revenue Code were excluded from the unitary group, plus (B) the tax, if any, which would be imposed on the corporation or corporations with valid elections under section 936 of the Internal Revenue Code without regard to the other members of the unitary group.

(c)(1) If the amount of the credit determined under clause (a) for any taxable year exceeds the limitation provided in clause (b), the excess shall be 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.

(2) The amount of the unused credit which may be added under subparagraph (1) for any preceding taxable year shall not exceed the amount by which the limitation provided by clause (b) for the taxable year exceeds the sum of

(i) the credit allowable under this subdivision for the taxable year, and

(ii) the amounts, which, by reason of subparagraph (1), are added to the amount allowable for the taxable year and which are attributable to taxable years preceding the taxable year in which an excess credit arises.

**History:** 1983 c 15 s 8; 1983 c 207 s 8,9; 1983 c 342 art 8 s 12

## 290.069 SMALL BUSINESS INVESTMENT CREDITS.

**Subdivision 1. Definitions.** (a) "Small business assistance office" means a nonprofit corporation which is formed under chapter 317, is an exempt organization under section 501(c)(3) of the Internal Revenue Code, and satisfies the following conditions:

(1) The primary purpose of the corporation is to aid in the formation of new businesses which create jobs in the state by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses.

(2) The corporation provides audited financial statements to all contributors and the commissioner of energy, planning, and development within 90 days following the close of the corporation's fiscal year.

(3) The corporation employs, at least, two full-time professional employees or the equivalent.

(4) The corporation is not engaged in providing financing or primarily engaged in arranging financing for businesses.

(5) The commissioner of energy, planning and development certifies that the corporation satisfies the requirements of this paragraph for the calendar year.

(b) "Technology" means a proprietary process, formula, pattern, device, or compilation of scientific or technical information unless it

(1) is in the public domain; or

(2) cannot be accurately valued.

(c) "Controlled group of corporations" means the controlled group of corporations as defined in section 1563 of the Internal Revenue Code, and if the corporation is part of a unitary business, includes the corporations or entities constituting the unitary business which are not in the controlled group of corporations as defined in section 1563.

(d) An "innovation center public corporation" is a nonprofit public corporation located at a state university in Minnesota that has the purpose of assisting, encouraging, developing, and advancing the high technology small business prosperity and economic welfare of the state.

(e) The "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended through January 15, 1983.

(f) "Qualified small business" means a business entity organized for profit if the entity:

(1) Has 20 or fewer employees and has less than \$1,000,000 in gross annual receipts;

(2) Is not a subsidiary or an affiliate of a business which employs more than 20 employees or has total gross receipts for the previous year of more than \$1,000,000, computed by aggregating all of the employees and gross receipts of the business entities affiliated with the business;

(3) Has its commercial domicile in this state;

(4) Does not derive more than 20 percent of its gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities;

(5) Is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(O) of the Internal Revenue Code of 1954, as amended through January 15, 1983; and

(6) Is certified by the commissioner of energy, planning and development that it satisfies the requirements of clauses (1) to (5).

**Subd. 2. Technology transfer credit.** A credit may be claimed against the taxes imposed by this chapter in an amount equal to 30 percent of the net value of the technology transferred to a qualified small business if the following conditions are satisfied:

(a) The commissioner certifies that the technology has the value claimed by the transferor taxpayer.

(b) The transferor taxpayer is the exclusive and undisputed owner of the technology at the time the transfer is made.

(c) Except as provided in paragraph (h), the transferor retains no proprietary or financial interest in the technology subsequent to its transfer to the qualified small business and no credit is claimed for the transfer of the technology in a prior or subsequent taxable year, except pursuant to the carryover provisions of subdivision 5.

(d) The credit shall apply only to the first \$1,000,000 of the net value of the technology transferred during the taxable year. The value of the technology shall not exceed the total qualified research expenses, as defined in section 290.068, subdivision 2, expended by the transferor to create or develop the technology. For purposes of this clause, "net value" means the total value of the technology less any payments received from the transferee and less the value of any equity interest in the transferee received by the transferor in exchange for the technology. For purposes of determining the value of the equity interest, the total value of the transferee shall be deemed to be not less than the value of the technology transferred, less any cash payment made to the transferor.

(e) The taxpayer has not deducted the value of the transferred property from income under any other provisions of this chapter, except that the costs of developing the technology may have been deducted as a business expense or depreciated or included in the computation of the research and experimental expenditure credit pursuant to section 290.068.

(f) The transferee business entity may not be a subsidiary or affiliate of the transferor taxpayer.

(g) The transferee makes a substantial investment in acquiring or developing the technology. The requirements of this clause are satisfied if (1) transferee pays the transferor an amount equal to 20 percent of the value of the technology in return for acquisition of the rights to the technology, or if (2) the transferee expends an equivalent amount for equipment, materials, wages, or other direct costs to develop, produce, or otherwise use the technology. The requirements of this paragraph may not be satisfied by granting the transferor an equity interest as provided by paragraph (h).

(h) The transferor may receive in exchange for the transfer of the technology an equity interest in the transferee, but this interest may not exceed 25 percent of the capital interest, if the transferee is a partnership, or 25 percent in value of the outstanding stock, if the transferee is a corporation. The transferor's basis in the equity interest shall be reduced by the amount of the credits received pursuant to this subdivision. The transferor may not deduct any loss realized on the sale or exchange of the equity interest.

The commissioner may require that the taxpayer obtain an appraisal of the value of the transferred technology by a reliable, expert third party. The commissioner may promulgate administrative rules for appraising the value of transferred technology.

**Subd. 3. Contribution credit.** A credit shall be allowed against the taxes imposed by this chapter in an amount equal to 50 percent of the first \$50,000 of contributions made during the taxable year to a small business assistance office or to an innovation center public corporation. No credit shall be allowed for any contributions deducted pursuant to any other provision of this chapter.

Subd. 4. **Equity investment credit.** (a) A credit shall be allowed against the tax imposed by this chapter for the taxable year in an amount equal to 30 percent of the net investment in excess of \$25,000 in the equity stock of a qualified small business. The maximum amount of the credit for a taxable year may not exceed \$75,000. For purposes of this credit the following limitations apply:

(1) Equity stock shall not include any security which provides for fixed or variable interest payments.

(2) The taxpayer and any related persons may not own more than 49 percent of the value of any class of stock. For purposes of this paragraph, a person is a related person to another person if (i) the relationship between the persons would result in a disallowance of losses under section 267 or 707(b) of the Internal Revenue Code of 1954 or (ii) the persons are members of the same controlled group of corporations. The restrictions provided by this subdivision shall apply for a three-year period beginning on the date the stock is purchased. If the taxpayer or a related person acquires more than 49 percent of the value of any class of stock after the allowance of a credit under this subdivision and prior to the end of the three-year period, the taxpayer's tax for the taxable year in which the credit was allowed shall be increased by the amount of the credit previously claimed.

(3) The credit shall not exceed 75 percent of the taxpayer's tax liability computed after the subtraction of all credits, other than the credit provided in this subdivision.

(b) If the principal place of business of the qualified small business is located in an enterprise zone designated pursuant to section 273.1312, \$10,000 shall be substituted for \$25,000 and \$100,000 for \$75,000 in paragraph (a).

(c) The taxpayer's basis in the stock shall be reduced by the amount of the credit.

Subd. 5. **Limitations; other conditions.** The provisions of section 290.068, subdivisions 3, clause (a); 4; and 5 shall apply to the sum of the credits which this section allows, except that no carryback shall be allowed. The carryover provisions of section 290.068, subdivision 3, clause (b), shall apply to the sum of the credits allowed by this section except that the term "research credit" or "research and experimental expenditure credit" shall include the credits authorized by subdivisions 2 and 3 of this section. The credits allowed by subdivisions 2 and 3 shall only be available to corporations and banks whose tax is computed pursuant to section 290.06, subdivision 1.

The maximum limitations on the amount of credits pursuant to subdivisions 2 and 3 shall be determined by aggregating together the credits of all the corporations in the controlled group of corporations with the taxpayer. In order to facilitate compliance with and enforcement of this provision the commissioner may require the taxpayer to claim the credit on a combined report of the unitary business or to file a copy of the consolidated federal return with the state return or both.

Subd. 6. **Repealer.** This section is repealed effective for contributions made to a small business office or to an innovation center public corporation as provided in subdivision 3, for technology transferred as described in subdivision 2, and for investments made as described in subdivision 4 in taxable years beginning after December 31, 1985.

**History:** 1983 c 342 art 8 s 13

**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 Internal Revenue Code. The commissioner shall provide by rule for the determination of the accounting period for taxpayers who file a combined report under section 290.34, subdivision 2, when members of the group use different accounting periods for federal income tax purposes. Unless the taxpayer changes its accounting period for federal purposes, the due date of the return is not changed.

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.

*[For text of subds 2 to 5, see M.S.1982]*

Subd. 5a. [Repealed, 1983 c 15 s 33]

*[For text of subds 6 and 7, see M.S.1982]*

**History:** 1983 c 342 art 1 s 14

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

*[For text of subd 1, see M.S.1982]*

Subd. 2. [Repealed, 1983 c 15 s 33]

Subd. 3. [Repealed, 1983 c 15 s 33]

Subd. 4. [Repealed, 1983 c 15 s 33]

*[For text of subd 5, see M.S.1982]*

Subd. 6. [Repealed, 1983 c 15 s 33]

**290.077 INCOME IN RESPECT OF DECEDENTS.**

Subdivision 1. **Inclusion in gross income.** Income in respect of a decedent shall be included in gross income in accordance with the method set forth in section 691(a) of the Internal Revenue Code of 1954, as amended through December 31, 1981.

Subd. 2. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subd 3, see M.S.1982]*

Subd. 4. **Deduction for federal estate tax and Minnesota inheritance or estate tax.** (1) **Allowance of deduction; federal estate tax.** A person who includes an amount in gross income under this section, shall be allowed a deduction for the federal estate tax computed in the same manner and in accordance with the method as provided in section 691(c)(1), (2), and (4) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

(2) **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.

(3) **Method of computing deduction.** For purposes of paragraph (2) 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 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.

(4) **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:** 1983 c 15 s 9,10

## 290.08 EXEMPTIONS FROM GROSS INCOME.

[For text of subs 1 to 20, see M.S.1982]

Subd. 23. **Ridesharing payments not gross income.** Gross income does not include payments, other than salary, received by a driver of a motor vehicle for use of the motor vehicle in a ridesharing arrangement as defined in section 169.01, subdivision 63.

[For text of subd 24, see M.S.1982]

Subd. 25. [Repealed, 1983 c 342 art 1 s 44]

**History:** 1983 c 311 s 11

**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) 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) 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.

(c) 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. As long as the provisions of clause (a) apply between Minnesota and Wisconsin, the provisions of clause (a) shall apply to any individual who is domiciled in Wisconsin.

(d) "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 (b), 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 (b), 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.

(e) 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:** 1983 c 15 s 11

#### **290.088 DEDUCTION FOR FEDERAL INCOME TAXES.**

Adjusted gross income for individuals, estates, and trusts shall be computed by allowing to individuals, estates, and trusts a deduction from gross income for federal income taxes. The amount of the deduction is determined under section 290.18, subdivision 2.

**History:** 1983 c 342 art 1 s 15

#### **290.089 DEDUCTIONS FROM GROSS INCOME; INDIVIDUALS.**

Subdivision 1. **Amount allowed.** In computing the net income of individuals, an amount determined pursuant to subdivision 2 or 3 is allowed as a deduction.

Subd. 2. **Itemized deductions.** Subject to the provisions of section 290.18, subdivision 1, an amount equal to the amount determined pursuant to section 63(f) of the Internal Revenue Code is allowed with the following adjustments:

(a) Add the amount 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 clause, "textbooks" includes 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. "Textbooks" does not include instructional books and materials used in the



teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship, nor does it include books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs;

(b) Add the amount of Minnesota and other states' estate or inheritance taxes which were allowed as a deduction under section 290.077, subdivision 4, on income in respect of a decedent;

(c) Add the amount by which the deduction for the taxable year allowed pursuant to subdivision 4 exceeds the amount determined pursuant to section 222 of the Internal Revenue Code;

(d) Subtract income taxes paid or accrued within the taxable year under this chapter;

(e) Subtract income taxes paid to any other state or to any province or territory of Canada if a credit is allowed for the taxes under section 290.081;

(f) If the deduction computed under section 164 of the Internal Revenue Code is not reduced by the amount of the credit or refund allowed under chapter 290A, subtract that amount;

(g) Subtract the amount of interest on investment indebtedness paid or accrued in a taxable year beginning before January 1, 1981, which has been carried forward and is allowed as a deduction in the taxable year under section 163(d) of the Internal Revenue Code;

(h) Subtract the amount of charitable contributions deducted under section 170 of the Internal Revenue Code that (i) exceeds the following limitations: (A) an overall limit of 30 percent of the taxpayer's Minnesota gross income which, for purposes of this paragraph, shall include the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code; and (B) the aggregate of contributions to organizations described in section 290.21, subdivision 3, clause (c) shall not exceed 20 percent of the taxpayer's Minnesota gross income; or (ii) was deducted as a carryover under section 170(d) of the Internal Revenue Code.

**Subd. 3. Standard deduction.** In lieu of the deductions provided in subdivision 2, 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 \$2,250.

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) 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. 4. Adoption expenses.** An individual taxpayer is allowed a deduction for the expenses incurred during the taxable year arising from the 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; the 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. 5. Computation of Minnesota deductions.** An individual who does not itemize deductions for federal purposes but does itemize deductions for Minnesota purposes shall compute that person's deductions for Minnesota as if that person had itemized their deductions for federal purposes under the provisions of subdivision 2. The individual shall be allowed as an itemized deduction for Minnesota the charitable contributions claimed as a deduction for federal purposes under the provisions of section 170(i) of the Internal Revenue Code.

**Subd. 6. Separate returns.** In the case of a husband and wife who filed a joint federal income tax return but filed separate Minnesota income tax returns, the amount of the itemized deductions that shall be allowed shall be the same amount that was allowed on their joint federal income tax return and as modified by subdivision 2. The deductions shall be divided between them based on who incurred and paid the amount which qualifies as a deduction. Amounts which qualify as a deduction and which are paid from joint funds may be divided between the spouses as they elect.

**Subd. 7. Internal Revenue Code.** The Internal Revenue Code referred to in any of the subdivisions of this section means the Internal Revenue Code of 1954, as amended through March 12, 1983.

**History:** 1983 c 342 art 1 s 16

## 290.09 DEDUCTIONS FROM GROSS INCOME.

**Subdivision 1. Limitations.** Except as provided in this subdivision, the deductions provided in this section from gross income shall only be allowed to corporations in computing net income. The provisions of subdivisions 2, clause (c), 28, and 29 shall also apply to individuals, estates, and trusts to the extent provided in those subdivisions.

**Subd. 2. Trade or business expenses.** (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.

(b) 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;

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

(d) 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, 1982.

(e) No deduction shall be allowed under this subdivision for illegal bribes, kickbacks, and other payments, fines, and penalties, or treble damage payments under the antitrust laws except as provided in section 162 of the Internal Revenue Code of 1954, as amended through December 31, 1982.

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

(b) Interest paid or accrued within the taxable year on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludable from gross income under section 290.08, or 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 1, 1982 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 1, 1982 shall apply.

(d) 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 1, 1982. The deduction of original issue discount shall be allowed as provided in section 163(e) of the Internal Revenue Code of 1954, as amended through December 1, 1982.

(e) No deduction shall be allowed for interest on any registration-required obligation unless the obligation is in registered form as provided in section 163(f) of the Internal Revenue Code of 1954, as amended through January 15, 1983.

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) federal income taxes (including the windfall profit tax on domestic crude oil), by corporations, national and state banks; (d) income or franchise taxes based on net income paid by a corporation to another state, to a political subdivision of another state, or to the District of Columbia; and (e) 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) **Wagering losses.** Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions. No loss from pari-mutuel betting shall be allowed except to the extent of verified receipts and the sworn testimony of at least one witness other than the taxpayer or his spouse.

(d) **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.

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

(f) **Worthless securities.** 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.

The definitions contained in section 165(g) of the Internal Revenue Code of 1954, as amended through January 15, 1983, shall apply. No deduction shall be allowed for any loss sustained on any registration-required obligation as defined in and except as provided in section 165(j) of the Internal Revenue Code of 1954, as amended through January 15, 1983.

(g) **Disaster losses.** Notwithstanding the provisions of (a), any loss attributable to a disaster 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 shall be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred. This provision shall apply only if an election has been made under the provisions of Section 165(i) of the Internal Revenue Code of 1954, as amended through January 15, 1983 for federal income tax purposes. Such deduction allowed in the preceding taxable year shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss. If an election is made, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed.

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) **Worthless Securities.** This section shall not apply to a debt which is evidenced by a security as defined in section 165(g)(2)(C) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

(e) **Reserve for Certain Debt Obligations.** A reserve for certain guaranteed bad debt obligations shall be allowed as provided in section 166(f) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

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.

In the case of recovery property as provided in clause (c), the deduction allowable under clause (c) shall be deemed to constitute the reasonable allowance provided by this subdivision, except for the provisions of Part (B) relating to first year depreciation and except with respect to that portion of the basis of the property to which section 167(k) of the Internal Revenue Code of 1954, as amended through January 15, 1983, applies.

(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 be the accelerated cost recovery system provisions of section 168 of the Internal Revenue Code of 1954, as amended through January 15, 1983, 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 January 15, 1983, 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 January 15, 1983:

(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 uses for federal income tax purposes 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 January 15, 1983. 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 January 15, 1983 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.

After the full amount of the allowable deduction for that property under the provision of section 168 of the Internal Revenue Code of 1954, as amended through January 15, 1983, has been obtained, the remaining depreciable basis in those assets for Minnesota purposes that shall be allowed as a depreciation allowance as provided above shall include the amount of any basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code, as amended through January 15, 1983, to reflect the investment tax credit. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code of 1954, as amended through January 15, 1983.

The provisions of section 168(i)(4) of the Internal Revenue Code of 1954, as amended through January 15, 1983 shall apply to restrict research credit carrybacks and net operating loss carrybacks which are allocable to elected qualified

leased property, notwithstanding section 290.068, subdivision 3, or 290.095, subdivision 3.

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 rules 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. This clause shall not apply with respect to recovery property as defined in clause (c).

(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 rules 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 January 15, 1983.

*[For text of subs 8 and 9, see M.S.1982]*

Subd. 10. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subd 13, see M.S.1982]*

Subd. 15. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subs 16 to 21, see M.S.1982]*

Subd. 22. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subd 25, see M.S.1982]*

Subd. 27. [Repealed, 1983 c 342 art 1 s 44]

*[For text of subd 28, see M.S.1982]*

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, including horses for horse racing, 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 \$30,000 of nonfarm gross income, or nonfarm taxable net income in the case of a corporation, provided however that in any case where nonfarm income exceeds \$30,000, the maximum allowable amount of \$30,000 shall be reduced by an amount equal to the nonfarm income in excess of \$30,000 multiplied by three. 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 \$30,000 of nonfarm gross income, or nonfarm taxable net income in the case of a corporation, provided however that in any case where nonfarm income exceeds \$30,000, the maximum allowable amount of \$30,000 shall be reduced by an amount equal to the nonfarm income in excess of \$30,000 multiplied by three.

(d) **Shareholders separate entities.** For purposes of this subdivision, individual shareholders of an S 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. 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.



(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. 31. **Construction period interest and taxes.** No deduction shall be allowed for real property construction period interest and taxes except as provided in section 189 of the Internal Revenue Code of 1954, as amended through December 1, 1982, notwithstanding any other provision of this section to the contrary.

**History:** 3Sp1982 c 1 art 7 s 1-3; 1983 c 2 s 1; 1983 c 15 s 12-14; 1983 c 207 s 10-12; 1983 c 342 art 8 s 14; 1983 c 342 art 1 s 17-22

### 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 January 15, 1983. 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, alternative tax itemized deductions shall include the amount allowable as a deduction for the taxable year under section 164 of the Internal Revenue Code for Minnesota income tax paid or accrued.

(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.

(8) Federal preference items from the business of mining or producing iron ore and other ores which are subject to the occupation tax and exempt from taxation under section 290.05, subdivision 1, shall not be a preference item for Minnesota.

(9) In the case of a corporate taxpayer, amortization of certified pollution control facilities, shall not be a preference item.

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 January 15, 1983, shall not apply.

**History:** 1983 c 207 s 13

## 290.095 OPERATING LOSS DEDUCTION.

*[For text of subs 1 to 5, see M.S.1982]*

**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 loss or credit carryback from any taxable year. The application shall be signed and verified as provided in section 290.37, subdivision 1, and shall be filed on or after the date of filing of the return for the taxable year from which the carryback results and within a period of 12 months from the end of such taxable year (or with respect to any portion of a credit carryback from a taxable year attributable to a loss carryback from a subsequent taxable year, the application shall be filed within a period of 12 months from the end of the subsequent taxable year), in the manner and form required by rules prescribed by the commissioner. The application shall set forth in such detail and with such supporting data and explanation as such rules shall require:

- (1) The amount of the loss or credit;
- (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 rules.

An application under this subdivision shall not constitute a claim for refund until 90 days from the date on which the application was filed, at which time it will become a claim for refund under the provisions of section 290.50.

(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 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.

(c) The provisions of this subdivision shall apply to net operating loss carrybacks as provided in subdivision 3 or 11; capital loss carrybacks as provided in section 290.16, subdivision 6; farm loss carrybacks as provided in section 290.09, subdivision 29; research credit carrybacks as provided in section 290.068, subdivision 3; and to any other carrybacks which may be provided in this chapter.

*[For text of subs 8 to 11, see M.S.1982]*

**History:** 1983 c 15 s 15

#### **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, 1982;
- (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 of the Internal Revenue Code of 1954, as amended through December 31, 1982;
- (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, 1982.
- (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 rules prescribed by the commissioner, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such rules, to treat such taxes or charges as so chargeable.

(12) No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if the trade or business (or the activities which comprise the trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the federal Controlled Substances Act) which is prohibited by federal law or the law of Minnesota.

**History:** 1983 c 207 s 14

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

*[For text of subd 1, see M.S.1982]*

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.

No adjustment shall be made:

(1) for taxes or other carrying charges described in section 290.10, clause (11), or

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

*[For text of subds 3 and 4, see M.S.1982]*

**History:** 1983 c 15 s 16

**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 1, 1982. 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.

**History:** 3Sp1982 c 1 art 7 s 4

**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 1, 1982.

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 1, 1982. 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.

**History:** 3Sp1982 c 1 art 7 s 5

**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 1, 1982. However, in section 333(f)(2), the date December 31, 1932 shall be substituted for February 28, 1913 when determining accumulated earnings and profits.

**History:** 3Sp1982 c 1 art 7 s 6

**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 January 15, 1983.

**History:** 3Sp1982 c 1 art 7 s 7; 1983 c 207 s 15

**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 1, 1982 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.

**History:** 3Sp1982 c 1 art 7 s 8

**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 290.089 or 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: 1983 c 342 art 1 s 23*

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

*[For text of subs 1 to 6, see M.S.1982]*

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 January 15, 1983. The provisions of section 1232A of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall apply to determine the amount of the original issue discount which shall be included in gross income. The tax treatment of stripped bonds shall be governed by the provisions of section 1232B of the Internal Revenue Code of 1954, as amended through December 31, 1982.

*[For text of subs 8 to 15, see M.S.1982]*

**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 January 15, 1983.

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 sections 1250 and 291 of the Internal Revenue Code of 1954, as amended through January 15, 1983, and rules adopted pursuant thereto except that the determination shall be made using the basis computed under this chapter.

**History:** 1983 c 207 s 16,17

## 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, as limited by section 58(i)(7) of the Internal Revenue Code of 1954, as amended through December 31, 1982, which are attributable to losses incurred in connection with sources of income outside the state.

*[For text of subd 1a, see M.S.1982]*

**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 from winnings on Minnesota pari-mutuel betting tickets shall be assigned to 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 or is a resident trust or estate.

(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 except for business income subject to the provisions of clause (1) and farm income subject to the provisions of clause (2). The term "unitary business" shall mean 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 but the absence of these centralized activities will not necessarily evidence a nonunitary business. Unity of ownership will not be deemed to exist when a corporation is involved unless that corporation is a member of a group of two or more corporations more than 50 percent of the voting stock of each member of the

group is directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, or by one or more of the member corporations of the group.

The entire income of a unitary business 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) For purposes of this section, amounts received by a nonresident 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.

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

**History:** 1983 c 15 s 17; 1983 c 207 s 18; 1983 c 342 art 1 s 24

## 290.171 ENACTMENT OF MULTISTATE TAX COMPACT.

The "multistate tax compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

### Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

## Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.
9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.

## Article III. Elements of Income Tax Laws.

## Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and

the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

#### Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The commissioner of revenue, after consultation with the Multistate Tax Commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commissioner, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

#### Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

#### Article IV. Division of Income.

1. As used in this article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business, and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual or any income received by a Minnesota resident individual or income from the operation of a farm, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

5. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

6. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

8. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

9. Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;  
(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the

service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

10. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

11. Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

12. Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

13. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

#### Article V. Elements of Sales and Use Tax Laws.

##### Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

#### Article VI. The Commission.

##### Organization and Management.

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant

agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

#### Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to



be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### Article VIII. Interstate Audits.

1. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

2. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it

within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

3. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

4. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

5. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

6. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

7. In no event shall the commission make any charge against a taxpayer for an audit.

8. As used in this article, "tax," in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

#### Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected,

may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

#### Article X. Entry Into Force and Withdrawal.

1. This compact shall become effective as to any other state upon its enactment. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

#### Article XI. Effect on Other Laws and Jurisdictions.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax, provided that the definition of "tax" in article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

#### Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact

shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

*History: 1983 c 342 art 16 s 1*

#### **290.172 COMMISSIONER OF REVENUE.**

The commissioner of revenue shall represent the state of Minnesota on the multistate tax commission. The commissioner may be represented on the commission by an alternate designated by him. The alternate shall be a deputy or assistant commissioner in the department of revenue.

*History: 1983 c 342 art 16 s 2*

#### **290.173 MULTISTATE COMPACT ADVISORY COMMITTEE.**

There is hereby established the multistate tax compact advisory committee composed of the commissioner of revenue or the alternate member of the commission designated by him, the attorney general or his designee, and two members of the senate, appointed by the committee on committees, and two members of the house of representatives appointed by the speaker of the house. The chairman shall be the member of the multistate tax commission, representing the state of Minnesota. The committee shall meet at the call of its chairman or at the request of a majority of its members, but in any event not less than three times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing the state of Minnesota on the commission.

*History: 1983 c 342 art 16 s 3*

#### **290.174 INTERSTATE AUDITS.**

Article VIII of the multistate tax compact relating to interstate audits shall be in force in and with respect to the state of Minnesota.

*History: 1983 c 342 art 16 s 4*

#### **290.175 OPTIONAL APPORTIONMENT.**

Notwithstanding the provisions of section 290.171, the taxpayer may elect to apportion his income to Minnesota pursuant to this chapter, without regard to section 290.171, article IV.

*History: 1983 c 342 art 16 s 5*

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

Subdivision 1. **Taxable net income.** (a) For resident individuals, taxable net income shall be the same as net income.

(b) For all other taxpayers, 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 sections 290.089, 290.09, and section 62 of the Internal Revenue Code of 1954, as amended through March 12, 1983, in accordance with the following provisions:

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

(2) That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries and so far as not entering into the computation of the net income assignable to this state under section 290.19, shall be allowed which the taxpayer's gross income from sources within this state, as determined under section 290.17, subdivision 2, clauses (1), (2), (3), and (6), 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 but before January 1, 1983 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. For an amount which remains to be deducted in a taxable year beginning after December 31, 1982, where the federal tax liability for the year in which the payment was made is joint and several under the computation of a joint federal return of husband and wife, the remaining amounts to be deducted shall be claimed by the same spouse and in the same dollar amount as the deduction was claimed in the first taxable year beginning after December 31, 1981.

(3) Those paid in a taxable year beginning after December 31, 1982 shall be claimed in the year in which the payment was made. This amount shall be apportioned between spouses as provided in clause (i) and shall be allocated for exempt income under the provisions of section 290.10, clause (9) or (10) as though the payment was part of the federal tax liability for the year in which the payment was made.

(4) 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 clause shall be increased by the self-employment tax allowed under section 290.10, clause (8). The self-employment tax shall be deducted in the year paid as provided in paragraph (1), (2), or (3). The self-employment tax must be deducted by the person who earned the income. Self-employment tax paid in a taxable year beginning after December 31, 1982 shall be allocated for exempt income as provided in paragraph (3).

(iii) 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.

(iv) 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 subdivision shall be modified for such year.

(v) If the readjustments required in (iii) or (iv) 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.

(vi) Refunds which are not involved with any readjustments under the transition rule shall be included in income under Minnesota Statutes 1982, section 290.01, subdivision 20a, clause (6) if it is from a year beginning before January 1, 1981.

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

*[For text of subds 3 and 4, see M.S.1982]*

**History:** 1983 c 342 art 1 s 25,26

## 290.21 DEDUCTIONS; INDIVIDUALS AND CORPORATIONS.

Subdivision 1. The following deductions shall be allowed only to corporations and shall be deductions from a corporation's taxable net income.

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,

(e) 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,

(f) 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;

(g) 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.

Subd. 3a. [Repealed, 1983 c 342 art 1 s 44]

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.

The dividend deduction provided in this subdivision does not apply to a dividend from a corporation which, for the taxable year of the corporation in which the distribution is made or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 of the Internal Revenue Code of 1954, as amended through December 31, 1982.

The dividend deduction provided in this subdivision applies to the amount of regulated investment company dividends only to the extent determined under section 854(b) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

(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.

*[For text of subs 5 and 6, see M.S.1982]*

**History:** 1983 c 15 s 18; 1983 c 342 art 1 s 27,28

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

*[For text of subs 3 and 4, see M.S.1982]*

**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 section 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.

*[For text of subds 9 and 15, see M.S.1982]*

**History:** 1983 c 342 art 1 s 29

### 290.26 EMPLOYEES' TRUST, ANNUITY PLANS.

Subd. 2. **Employer contributions.** Contributions of an employer to an employee's trust, annuity plan, or to an employee's stock ownership trust 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, 1982 as adapted to the provisions of this chapter under rules issued by the commissioner of revenue.

Subd. 2a. [Repealed, 1983 c 15 s 33]

*[For text of subd 6, see M.S.1982]*

**History:** 1983 c 15 s 19; 1983 c 207 s 19

### 290.31 PARTNERSHIPS; INDIVIDUAL LIABILITY OF PARTNERS.

*[For text of subd 1, see M.S.1982]*

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 1231 of the Internal Revenue Code of 1954, as amended through January 15, 1983 (relating to certain property used in a trade or business and involuntary conversions),

(d) charitable contributions as defined in section 170(c) of the Internal Revenue Code of 1954, as amended through December 31, 1982,

(e) dividends with respect to which there is provided an exclusion under section 116 or a deduction under sections 241 to 247 of the Internal Revenue Code of 1954, as amended through December 31, 1982,

(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 164(a) of the Internal Revenue Code of 1954, as amended through December 31, 1982, 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 or section 170 of the Internal Revenue Code of 1954, as amended through December 31, 1982,

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

(d) the additional itemized deductions for individuals provided in sections 211 to 223 of the Internal Revenue Code of 1954, as amended through December 31, 1982, 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.

*[For text of subs 4 to 27, see M.S.1982]*

**History:** 1983 c 342 art 1 s 30,31

## 290.34 CORPORATIONS, SPECIAL PROVISIONS.

*[For text of subd 1, see M.S.1982]*

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, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing. All intercompany transactions between companies which are contained on the com-

bined report shall be eliminated. This subdivision shall not apply to insurance companies whose income is determined under section 290.35 or to investment companies whose income is determined under section 290.36.

Subd. 3. [Repealed, 1983 c 15 s 33]

**History:** 1983 c 342 art 1 s 32

### **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.

The decedent's final income tax return, and all other income tax returns for prior years where the decedent had gross income in excess of the minimum amount at which an individual is required to file and did not file, shall be filed by his or her personal representative, if any. If there is no personal representative, the return or returns shall be filed by the transferees as defined in section 290.29, subdivision 3, 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 willfully 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 (10), 290.08, and 290.17.

*[For text of subs 2 and 3, see M.S.1982]*

Subd. 4. **Furnishing of social security number; penalty.** (a) Any individual with respect to whom a return, statement, or other document is required under this chapter to be made by another person shall furnish to that other person the individual's social security account number. Any person required under this chapter to make a return, statement, or other document with respect to another person who is an individual shall request from that individual and shall include in the return, statement, or other document, the individual's social security account number. A return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each individual beneficiary of the estate or trust, otherwise a return of any individual with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered as a return, statement, or other document with respect to another person.

(b) If any person who is required under clause (a) to (1) furnish his social security account number to another person, or (2) include in any return, statement, or other document made with respect to another person who is an individual the social security account number of that individual; fails to comply with the requirement at the time prescribed, that person shall, unless it is shown that the failure is due to reasonable cause and not to willful neglect, pay a penalty of \$50 for each failure except that the total amount imposed on a person for all failures during any calendar year shall not exceed \$25,000.

*History: 1983 c 207 s 20; 1983 c 301 s 179; 1983 c 342 art 1 s 33*

### 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, or if the taxpayer fails to file a return or amended return, the commissioner may, in addition to any other remedies which may be available, bring an action in equity by the state against the taxpayer for an injunction ordering the taxpayer to file a complete and proper return in accordance with this subdivision. The district courts of this state shall have jurisdiction over the action and disobedience of an injunction issued under this subdivision shall be punished as a contempt of district court.

*[For text of subd 1a, see M.S.1982]*

**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 290.089, subdivision 3, 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;

(e) the limitation on the deduction for investment interest prescribed in section 163(d)(1)(A) of the Internal Revenue Code of 1954, as amended through March 12, 1983, for married individuals who file separate returns shall also apply to married individuals who file separately on one return.

*[For text of subd 3, see M.S.1982]*

**History:** 1983 c 15 s 20; 1983 c 342 art 1 s 34

## 290.41 INFORMATION RETURNS.

*[For text of subs 1 and 2, see M.S.1982]*

**Subd. 3. By brokers.** The commissioner of revenue may require every person doing business as a broker to furnish him with the name and address of each customer for whom they have transacted business, and with such details regarding gross proceeds and other information 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. The provisions of section 6045 of the Internal Revenue Code of 1954, as amended through December 31, 1982, which define terms and provide the requirements that a statement be furnished to the customer shall apply.

*[For text of subs 4 to 7, see M.S.1982]*

**Subd. 8. Failure to file return.** In the case of each failure to file, with the commissioner, 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 willful neglect, the person failing to file such return shall pay to the commissioner a penalty of \$50 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000. If one or more failures to file a return are due to intentional disregard of the filing requirement, then with respect to the failures the penalty imposed under the preceding sentence shall not be less than an amount equal to

(a) in the case of a return not described in clause (b) or (c), ten percent of the aggregate amount of the items required to be reported,

(b) in the case of a return required to be filed under subdivision 3, five percent of the gross proceeds required to be reported,

(c) in the case of a return required to be filed under subdivision 9 relating to direct sales, \$100 for each failure; however, the total amount imposed on the delinquent person for all intentional failures during any calendar year shall not exceed \$50,000. The penalty shall be collected in the same manner as any delinquent income tax.

**Subd. 9. Payments of remuneration for services and direct sales.** Every person who is required to make a return under section 6041A (relating to information returns regarding payments of remuneration for services and direct sales) of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall file with the commissioner a copy of the return containing the information required under that section, and the provisions of that section shall govern the requirements of a statement that must be furnished to persons with

respect to whom information is required to be furnished, notwithstanding section 290.42, clause (7).

**History:** 1983 c 207 s 21-23

#### **290.431 NONGAME 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 nongame 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 nongame wildlife management account. The sum of the amounts so designated to be paid shall be credited to the nongame wildlife management account for use by the nongame 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.

The state pledges and agrees with all contributors to the nongame wildlife management account to use the funds contributed solely for the management of nongame wildlife projects and further agrees that it will not impose additional conditions or restrictions that will limit or otherwise restrict the ability of the commissioner of natural resources to use the available funds for the most efficient and effective management of nongame wildlife.

**History:** 1983 c 342 art 1 s 35

#### **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 and the taxes, interest, and penalty due for any and all prior years shall be paid by his personal representative, if any. If there is no personal representative, the taxes, interest, and penalty shall be paid by the transferees, as defined in section 290.29, subdivision 3, 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:** 1983 c 301 s 180

**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 estates and trusts the balance of tax due after applying any tax credit may be paid in two equal installments.

The first shall be paid at the time fixed for filing the return, and the second on or before six 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.

*[For text of subs 2 to 4, see M.S.1982]*

**History:** 1983 c 207 s 24

**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. In the case of an individual, the commissioner may audit and adjust the taxpayer's computation of itemized deductions to make them properly conform with the provisions of section 290.089.

**History:** 1983 c 342 art 1 s 36

#### 290.48 DELINQUENT TAXES, COLLECTION.

*[For text of subds 3 to 5, see M.S.1982]*

Subd. 6. [Repealed, 1983 c 15 s 33]

*[For text of subds 7 and 8, see M.S.1982]*

Subd. 10. **Presumptions where owner of large amount of cash is not identified.**

(a) If the individual who is in physical possession of cash in excess of \$10,000 does not claim such cash as his, or as belonging to another person whose identity the commissioner can readily ascertain and who acknowledges ownership of such cash, then, for purposes of subdivisions 3 and 4, it shall be presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

(b) In the case of any assessment resulting from the application of clause (a), the entire amount of the cash shall be treated as taxable income for the taxable year in which the possession occurs, such income shall be treated as taxable at an eight percent rate, and except as provided in clause (c), the possessor of the cash shall be treated (solely with respect to the cash) as the taxpayer for purposes of this chapter and the assessment and collection of the tax.

(c) If, after an assessment resulting from the application of clause (a), the assessment is abated and replaced by an assessment against the owner of the cash, the later assessment shall be treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment.

(d) For purposes of this subdivision, the definitions contained in section 6867 of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall apply.

**History:** 1983 c 207 s 25

NOTE: Subdivision 6 was amended by Laws 1983, chapter 247, section 122, to read as follows:

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

#### 290.49 TIME LIMIT ON ASSESSMENT, COLLECTION.

*[For text of subds 1 to 5, see M.S.1982]*

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 at any time, and a proceeding in court for the collection of the tax must be begun within five years after the assessment.

*[For text of subd 7, see M.S.1982]*

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. The period provided for the carryback of any amount of loss or credit is also extended as provided in the agreement, notwithstanding any other law to the contrary.

*[For text of subds 10 and 11, see M.S.1982]*

**History:** 1983 c 15 s 21; 1983 c 180 s 10

## **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, 290.93, subdivision 9, and 290.936, interest on the overpayment refunded or credited to the taxpayer shall be allowed at the rate of six percent per annum computed from the date of payment of the tax until the date the refund is paid or credit is made to the taxpayer. However, to the extent that the basis for the refund is a net operating loss carryback or a capital loss carryback, interest shall be computed only from the end of the taxable year in which the loss occurs.

(f) If a taxpayer reports a change in his federal gross income, items of tax preference, deductions, credits, or a renegotiation, or files a copy of his amended federal return, within 90 days as provided by section 290.56, subdivision 2, a refund may be made of any overpayment within one year after such report or amended return is filed except as provided in subdivision 2.

(g) There is hereby appropriated from the general fund to the commissioner of revenue the amounts necessary to make payments of refunds allowed pursuant to this section.

*[For text of subds 2 to 4, see M.S.1982]*

**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, or 290.936 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 rules 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.

*[For text of subd 6, see M.S.1982]*

**History:** 1983 c 15 s 22,23

**290.501** [Repealed, 1983 c 342 art 1 s 44]

**290.522 ACTION TO ENJOIN PROMOTERS OF ABUSIVE TAX SHELTERS.**

A civil action in the name of the state of Minnesota to enjoin any person from further engaging in conduct subject to penalty under section 290.53, subdivision 9 (relating to penalty for promoting abusive tax shelter), may be commenced at the request of the commissioner. Any action under this section shall be brought by the attorney general in the tax court or the district court for the judicial district in which such person resides, has his principal place of business, or has engaged in conduct subject to penalty under section 290.53, subdivision 9, or in the district court for Ramsey County. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state of Minnesota against the person.

If the court finds that the person has engaged in any conduct subject to penalty under section 290.53, subdivision 9 (relating to penalty for promoting abusive tax shelters), and that injunctive relief is appropriate to prevent recurrence of the conduct, the court may enjoin the person from engaging in the conduct or in any other activity subject to penalty under section 290.53, subdivision 9.

**History:** 1983 c 207 s 26

**290.53 PENALTIES, INTEREST.**

*[For text of subd 1, see M.S.1982]*

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.

In the case of a failure to file a return of tax imposed by this chapter within 60 days of the date prescribed for filing of the return (determined with regard to any extensions of time for filing), where the return has been demanded by the commissioner under the provisions of section 290.47, the amount added to the tax under this subdivision shall not be less than the lesser of \$50 or 100 percent of the amount required to be shown as the amount of tax which is due with the return.

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.

*[For text of subd 3, see M.S.1982]*

**Subd. 3a. Intentional disregard of law or rules.** If any part of any additional assessment is due to negligence or intentional disregard of the provisions of this chapter or rules of the commissioner of revenue (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 any other penalties prescribed, (a) any person required by this chapter to make a return, who knowingly fails to make it at the time required by law, is guilty of a gross misdemeanor; (b) any person who willfully makes and subscribes any return, statement, or other document which he knows to be false as to any material matter is guilty of a felony; (c) any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter is guilty of a felony; and (d) any person who willfully fails to pay the tax at the time required by law, with the intent to evade or defeat the tax, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is 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 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 an officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

*[For text of subds 5 and 7, see M.S.1982]*

**Subd. 8. Interest on penalties.** Where it is not specifically provided that a penalty contained in this chapter or chapter 290A will accrue interest, interest at the rate specified in section 270.75 will be added to any penalty from the date the penalty should have been paid, until paid.

Subd. 9. **Penalty for promoting abusive tax shelters.** Any person who (a)(1) organizes (or assists in the organization of) a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, or

(2) participates in the sale of any interest in an entity or plan or arrangement referred to in clause (1), and

(b) makes or furnishes (in connection with the organization or sale) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter,

shall pay a penalty equal to the greater of \$1,000 or ten percent of the gross income derived or to be derived by the person from the activity.

The penalty imposed by this subdivision is in addition to any other penalty provided by this section. The penalty shall be collected in the same manner as any delinquent income tax. In any proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof shall be upon the commissioner.

Subd. 10. **Frivolous income tax return; penalty.** If any individual files what purports to be an income tax return required by this chapter, but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect; and the conduct is due to a position which is frivolous, or a desire (which appears on the purported return) to delay or impede the administration of Minnesota income tax laws, then the individual shall pay a penalty of \$500. The penalty imposed by this subdivision shall be in addition to any other penalty provided by this section. The penalty shall be collected in the same manner as any delinquent income tax. In any proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof shall be upon the commissioner.

Subd. 11. **Assisting in fraud and false statements; criminal provisions.** Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under this chapter, of a return, affidavit, claim, or other document, which is fraudulent or false as to any material matter, where the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is guilty of a felony. Any criminal offense under this subdivision may be prosecuted in the same manner and within the same period of limitations provided in subdivision 4.

**History:** 1983 c 15 s 24,25; 1983 c 207 s 27-29; 1983 c 294 s 1,2; 1983 c 342 art 1 s 42

### **290.531 PAYMENT OF TAX PENDING APPEAL.**

When a taxpayer appeals any liability assessed under this chapter to the tax court, and the amount in dispute is more than \$6,000, the entire amount of the tax, penalty, and interest assessed by the commissioner 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 liability or that the liability 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 liability,

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:** 1983 c 15 s 26

### 290.58 EXAMINERS, POWERS OF.

The 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, subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony conferred upon the commissioner by this chapter. The clerk of any court, upon demand of any examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before the examiner. The commissioner may also issue such subpoenas. The commissioner may appoint referees to review, singly or as a board of review, the reports of the income tax examiners and petitions or complaints of taxpayers, and report on them 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, or in the case of a subpoena issued by the commissioner, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

**History:** 1983 c 180 s 11; 1983 c 359 s 23

### 290.92 TAX WITHHELD AT SOURCE UPON WAGES.

*[For text of subd 1, see M.S.1982]*

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 290.089, subdivision 3, 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.

*[For text of subs 3 to 5, see M.S.1982]*

**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), except where 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. However, any return may be filed on or before the tenth day of the second calendar month following the period if the return shows timely deposits in full payment of the taxes due for that period. For the purpose of the preceding sentence, a deposit which is not required to be made within the return period, may be made on or before the last day of the first calendar month following the close of the period. Every employer, in preparing a 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 \$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 the month.

(c) **Other methods.** The commissioner may by rule 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 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 the manner and at the times as the commissioner prescribes. If the underpayment cannot be adjusted, the amount of the underpayment shall be assessed and collected in the manner and at the times as the commissioner prescribes.

(3) If any employer fails to make and file any return required by paragraph (1) at the time prescribed, or makes and files a false or fraudulent return, the commissioner shall make for him a return from his own knowledge and from

information he obtains through testimony, or otherwise, and assess a tax on the basis of it. The amount of tax shown on it shall be paid to the commissioner at the times as the commissioner prescribes. Any return or assessment 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 to it.

(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 the tax, whether or not the time otherwise prescribed by law for making and filing the return and paying the 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 rules 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 3-1/2 years after the due date of the return required by paragraph (1), or the date the return was filed, whichever is later. 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 for the sum or sums (and any added penalties and interest). 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 this section, fails to deduct and withhold the tax under this section, and thereafter the taxes against which the tax may be credited are paid, the tax required to be deducted and withheld shall not be collected from the employer; but this does not relieve the employer from liability for any penalties and interest otherwise applicable for 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), the 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 the employer. The statement shall also give the address of the employer owing the tax, the period for which the tax is due, the date of the delinquency, and any other information required by the attorney general. The attorney general shall institute legal action in the name of the state to recover the amount of the 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 stated in it and that the amount shown in it is due from the employer named in the statement. If an action is instituted, 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 it as security for any judgment which has been or may be recovered. Any action shall be brought within five years 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.

In the case of failure to make and file the return or if the return is false or fraudulent, or the deposit is not made, the 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 appeal the judgment as in other 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 to it.

**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. In lieu of the trust fund account, the commissioner may, when necessary in order to secure the withholding of the tax imposed by this chapter, require an employer to file with the department of revenue a bond in an amount determined by the commissioner, or in lieu thereof, security in a form and in an amount as he determines, not to exceed twice the estimated average liability for future monthly withholding tax periods.

(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, within 30 days after the date of receipt of a written request from the employee if the 30-day period ends before January 31, 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, 1981,

(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 rules providing for reasonable extensions of time, not in excess of 30 days, to employers or payers required to furnish such statements to their employees or payees under this subdivision.

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

*[For text of subs 8 to 12, see M.S.1982]*

**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. A return shall not be treated as filed until it is in processible form. A return is in processible form when it is filed on a permitted form containing the taxpayer's name, address, social security account number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return. 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.

*[For text of subd 14, see M.S.1982]*

**Subd. 15. Penalties.** (1) 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 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 the 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 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 added shall be collected in the same manner as the tax.

(2) 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, willfully fails to withhold the tax or make the deposits, files a false or fraudulent return, willfully fails to make the payment or deposit, or willfully attempts in any manner to evade or defeat the tax or the payment or deposit of it, there shall also be imposed on the employer as a penalty an amount equal to 50 percent of the amount of tax, less any amount paid or deposited by the employer on the basis of the 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.

(3) 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 the statements, and quarterly returns, to the commissioner, willfully 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 willfully fails to furnish a statement or the reconciliation in the manner, at the time, and showing the information required by the provisions of subdivision 7, or rules prescribed by the commissioner thereunder, there shall be imposed on the person a penalty of \$50 for each act or failure to act, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000. The penalty imposed by this paragraph is 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, paragraph (8).

(4) In addition to any other penalties 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 willfully fails to withhold the tax or truthfully make and file the quarterly return or make the payment or deposit, or attempts to evade or defeat the tax is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is guilty of a felony.

(5) In lieu of any other penalty provided by law, except the penalty provided by paragraph (3), 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 willfully 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 willfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or rules prescribed by the commissioner thereunder, is guilty of a gross misdemeanor.

(6) Any employee required to supply information to his employer under the provisions of subdivision 5, who willfully fails to supply information or willfully supplies false or fraudulent information thereunder which would require an increase in the tax to be deducted and withheld under subdivision 2a or subdivision 3, is guilty of a gross misdemeanor.

(7) 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 an officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(8) 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.

(9) 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 is liable to the commissioner of revenue for a penalty of \$500 for each instance. The penalty is immediately due and payable and may be collected in the same manner as any delinquent income tax.

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

(11) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under this section, of a return, affidavit, claim, or other document, which is fraudulent or false as to any material matter, where the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a gross misdemeanor, unless the tax involved exceeds \$300, in which event he is guilty of a felony.

(12) 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 after the commission of the offense.

*[For text of subds 16 to 25, see M.S.1982]*

**Subd. 26. Extension of withholding to certain payments where identifying number not furnished or inaccurate.** (a) If, in the case of any backup withholding payment, (1) the payee fails to furnish his social security account number to the payor, or (2) the commissioner notifies the payor that the number furnished by the payee is incorrect, then the payor shall deduct and withhold from the payment a tax equal to five percent of the payment.

(b) (1) In the case of any failure described in clause (a) (1), clause (a) shall apply to any backup withholding payment made during the period during which the social security account number has not been furnished.

(2) In any case where there is a notification described in clause (a)(2), clause (a) shall apply to any backup withholding payment made (i) after the close of the 15th day after the day on which the payor was so notified, and (ii) before the payee furnishes another social security account number.

(3) Unless the payor otherwise elects, clause (a) shall also apply to any backup withholding payment made after the close of the period described in paragraph (1) or (2) (as the case may be).

If the payor so elects, clause (a) shall also apply to any backup withholding payment made during the 15-day period described in paragraph (2).

(c) The provisions of section 3402(s) of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall apply and shall govern when withholding shall be required and the definition of terms. The term "backup withholding payment" shall include only those payments for personal services. No tax shall be deducted or withheld under this subdivision with respect to any amount for which withholding is otherwise required under this section. For purposes of this section, payments which are subject to withholding under this subdivision shall be treated as if they were wages paid by an employer to an employee.

(d) Whenever the commissioner notifies a payor under this subdivision that the social security account number furnished by any payee is incorrect, notwithstanding section 290.61, the commissioner shall at the same time furnish a copy of the notice to the payor, and the payor shall promptly furnish the copy to the payee. If the commissioner notifies a payor under this subdivision that the social security account number furnished by any payee is incorrect and the payee subsequently furnishes another social security account number to the payor, the

payor shall promptly notify the commissioner of the other social security account number furnished.

Subd. 27. Any holder of a class A, B, or D license issued by the Minnesota horse racing commission, who makes a payment or payments for winnings on a pari-mutuel betting ticket or tickets in an amount of \$200 or more to the same individual, shall deduct from the payment or payments and withhold 11 percent of the amount as Minnesota withholding tax. For purposes of this subdivision, winnings from a pari-mutuel betting ticket must be determined by reducing the amount received by the amount paid for the ticket, and payments for winning on a pari-mutuel betting ticket which are not money must be taken into account at their fair market value. For purposes of the provisions of this section, a payment to any person of winnings which are subject to withholding must be treated as if the payment was a wage paid by an employer to an employee. Every individual who is to receive a payment of winnings which are subject to withholding shall furnish the license holder with a statement, made under the penalties of perjury, containing the name, address, and social security account number of the person receiving the payment and of each person entitled to any portion of such payment. The license holder is liable for the payment of the tax required to be withheld under this subdivision and subdivision 28 but is not liable to any person for the amount of the payment.

Subd. 28. Any holder of a class A or B license issued by the Minnesota horse racing commission who makes a payment to a holder of a class C license issued by the commission, or who pays an amount as a purse, shall deduct from the payment and withhold seven percent of the amount as Minnesota withholding tax when the amount paid to that individual during the calendar year exceeds \$200. For purposes of the provisions of this section, a payment to any person which is subject to withholding under this subdivision must be treated as if the payment was a wage paid by an employer to an employee. Every individual who is to receive a payment which is subject to withholding under this subdivision shall furnish the license holder with a statement, made under the penalties of perjury, containing the name, address, and social security account number of the person receiving the payment. No withholding is required if the individual presents a signed certificate from his employer which states that the individual is an employee of that employer. A nonresident individual who holds a class C license must be treated as an athlete for purposes of applying the provisions of sections 290.17, subdivision 2(1)(b)(ii) and 290.92, subdivision 4a.

**History:** 1982 c 523 art 40 s 14; 1983 c 15 s 27; 1983 c 180 s 12,13; 1983 c 207 s 30-33; 1983 c 247 s 123; 1983 c 294 s 3; 1983 c 342 art 1 s 37-39

## 290.93 DECLARATION OF ESTIMATED TAX.

*[For text of subs 1 to 8, see M.S.1982]*

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. A return shall not be treated as filed until it is in processible form. A return is in processible form when the return is filed on a permitted form, and the return contains the taxpayer's name, address, social security account number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return. 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) or (5), 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 subparagraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under paragraph (2) (a) for such installment date.

(4) The addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

(a) The total tax liability shown on the return of the individual for the preceding taxable year (if a return showing a liability for such taxes was filed by the individual for the preceding taxable year of 12 months), or

(b) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to the personal

credits for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to the preceding taxable year, or

(c) An amount equal to 80 percent (66  $\frac{2}{3}$  percent in the case of farmers referred to in subdivision 5(2) of this section) of the tax for the taxable year (after deducting personal credits) computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, 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) No addition to the tax shall be imposed under this subdivision for any taxable year if:

(a) the individual did not have any liability for tax for the preceding taxable year,

(b) the preceding taxable year was a taxable year of 12 months, and

(c) the individual was a resident of Minnesota throughout the preceding taxable year.

(6) 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, and 290.501, 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 willfully fails to pay such estimated tax at the time or times required by law or rules, shall, in addition to other penalties provided by law, be guilty of a gross misdemeanor. This subdivision shall not apply to an individual with respect to the failure to pay estimated tax if there is no addition to the tax under this section with respect to the failure to pay estimated tax.

**History:** 1983 c 207 s 34-36

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

*[For text of subs 1 to 3, see M.S.1982]*

**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 clause (A).

(4) (A) If this paragraph is applicable, the amount determined for any installment shall be determined in the following manner:

(i) take the taxable income for all months during the taxable year preceding the filing month,

(ii) divide that amount by the base period percentage for all months during the taxable year preceding the filing month,

(iii) determine the tax on the amount determined under item (ii), and

(iv) multiply the tax computed under item (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(B) For purposes of this paragraph:

(i) The "base period percentage" for any period of months shall be the average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years.

(ii) The term "filing month" means the month in which the installment is required to be paid.

(iii) This paragraph shall only apply if the base period percentage for any six consecutive months of the taxable year equals or exceeds 70 percent.

(iv) The commissioner may by rules provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(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 90 percent for taxable years beginning after December 31, 1983.

*[For text of subds 5 and 7, see M.S.1982]*

**History:** 1983 c 207 s 37

#### **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 and by subcontractors whose business location is outside of the state of Minnesota, until satisfactory showing is made that said contractor or out-of-state subcontractor has complied with the provisions of section 290.92. A certificate by the commissioner of revenue shall satisfy this requirement with respect to the contractor or out-of-state subcontractor. If, at the time of final settlement, there are any unpaid withholding taxes, penalties, or interest arising from the government contract, the department shall issue a certification to the contractor or out-of-state subcontractor upon payment, with certified funds, of any unpaid withholding taxes, penalties, and interest. Payment is received by the department upon delivery of the certified funds to the central office located in St. Paul, or any district or subdistrict office located throughout the state.

**History:** 1983 c 180 s 14

#### **290.9725 ELECTION BY SMALL BUSINESS CORPORATION.**

Any corporation having a valid election in effect under section 1362 of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall not be subject to the taxes imposed by this chapter, except the tax imposed under section 290.92.

**History:** 1983 c 207 s 38

#### **290.9726 CORPORATION TAXABLE INCOME TAXED TO SHAREHOLDERS.**

*[For text of subds 1 to 4, see M.S.1982]*

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 as provided in sections 1366 and 1377 of the Internal Revenue Code of 1954, as amended through December 31, 1982. 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 it existed prior to October 19, 1982, 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: 1983 c 207 s 39,40*

#### **290.974 RETURN OF S CORPORATION.**

Every S corporation shall make a 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, each shareholder's pro rata share of each item of the corporation for 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 rules prescribe.

*History: 1983 c 207 s 41*