

## CHAPTER 290

### INCOME AND FRANCHISE TAXES

<p>290.01 Definitions.</p> <p>290.015 Minimum contacts required for jurisdiction to tax trade or business.</p> <p>290.032 Lump sum distribution tax.</p> <p>290.05 Exempt individuals, organizations, estates, trusts.</p>	<p>290.06 Rates of tax; credits.</p> <p>290.067 Dependent care credit.</p> <p>290.191 Apportionment of net income.</p> <p>290.92 Tax withheld at source upon wages.</p> <p>290.9201 Tax on nonresident entertainers.</p>
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#### 290.01 DEFINITIONS.

*[For text of subs 1 to 3, see M.S.1994]*

**Subd. 3a. Trust.** The term "trust" has the meaning provided under the Internal Revenue Code, and also means designated settlement fund as defined in and taxed federally under section 468B of the Internal Revenue Code.

*[For text of subs 3b to 7a, see M.S.1994]*

**Subd. 7b. Resident trust.** Resident trust means a trust, except a grantor type trust, which either (1) was created by a will of a decedent who at his or her death was domiciled in this state or (2) is an irrevocable trust, the grantor of which was domiciled in this state at the time the trust became irrevocable. For the purpose of this subdivision, a trust is considered irrevocable to the extent the grantor is not treated as the owner thereof under sections 671 to 678 of the Internal Revenue Code. The term "grantor type trust" means a trust where the income or gains of the trust are taxable to the grantor or others treated as substantial owners under sections 671 to 678 of the Internal Revenue Code.

*[For text of subs 8 to 18, see M.S.1994]*

**Subd. 19. Net income.** The term "net income" means the federal taxable income, as defined in section 63 of the Internal Revenue Code of 1986, as amended through the date named in this subdivision, incorporating any elections made by the taxpayer in accordance with the Internal Revenue Code in determining federal taxable income for federal income tax purposes, and with the modifications provided in subdivisions 19a to 19f.

In the case of a regulated investment company or a fund thereof, as defined in section 851(a) or 851(h) of the Internal Revenue Code, federal taxable income means investment company taxable income as defined in section 852(b)(2) of the Internal Revenue Code, except that:

(1) the exclusion of net capital gain provided in section 852(b)(2)(A) of the Internal Revenue Code does not apply; and

(2) the deduction for dividends paid under section 852(b)(2)(D) of the Internal Revenue Code must be applied by allowing a deduction for capital gain dividends and exempt-interest dividends as defined in sections 852(b)(3)(C) and 852(b)(5) of the Internal Revenue Code.

The net income of a real estate investment trust as defined and limited by section 856(a), (b), and (c) of the Internal Revenue Code means the real estate investment trust taxable income as defined in section 857(b)(2) of the Internal Revenue Code.

The net income of a designated settlement fund as defined in section 468B(d) of the Internal Revenue Code means the gross income as defined in section 468B(b) of the Internal Revenue Code.

The Internal Revenue Code of 1986, as amended through December 31, 1986, shall be in effect for taxable years beginning after December 31, 1986. The provisions of sections 10104, 10202, 10203, 10204, 10206, 10212, 10221, 10222, 10223, 10226, 10227, 10228, 10611, 10631, 10632, and 10711 of the Omnibus Budget Reconciliation Act of 1987, Public Law Number 100-203, the provisions of sections 1001, 1002, 1003, 1004, 1005, 1006, 1008, 1009, 1010, 1011, 1011A, 1011B, 1012, 1013, 1014, 1015, 1018, 2004, 3041, 4009, 6007, 6026, 6032, 6137, 6277, and 6282 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, and the provisions of sections 7811, 7816, and 7831 of the

Omnibus Budget Reconciliation Act of 1989, Public Law Number 101-239, shall be effective at the time they become effective for federal income tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1987, shall be in effect for taxable years beginning after December 31, 1987. The provisions of sections 4001, 4002, 4011, 5021, 5041, 5053, 5075, 6003, 6008, 6011, 6030, 6031, 6033, 6057, 6064, 6066, 6079, 6130, 6176, 6180, 6182, 6280, and 6281 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, the provisions of sections 7815 and 7821 of the Omnibus Budget Reconciliation Act of 1989, Public Law Number 101-239, and the provisions of section 11702 of the Revenue Reconciliation Act of 1990, Public Law Number 101-508, shall become effective at the time they become effective for federal tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1988, shall be in effect for taxable years beginning after December 31, 1988. The provisions of sections 7101, 7102, 7104, 7105, 7201, 7202, 7203, 7204, 7205, 7206, 7207, 7210, 7211, 7301, 7302, 7303, 7304, 7601, 7621, 7622, 7641, 7642, 7645, 7647, 7651, and 7652 of the Omnibus Budget Reconciliation Act of 1989, Public Law Number 101-239, the provision of section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law Number 101-73, and the provisions of sections 11701 and 11703 of the Revenue Reconciliation Act of 1990, Public Law Number 101-508, shall become effective at the time they become effective for federal tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1989, shall be in effect for taxable years beginning after December 31, 1989. The provisions of sections 11321, 11322, 11324, 11325, 11403, 11404, 11410, and 11521 of the Revenue Reconciliation Act of 1990, Public Law Number 101-508, and the provisions of sections 13224 and 13261 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1990, shall be in effect for taxable years beginning after December 31, 1990.

The provisions of section 13431 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they became effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1991, shall be in effect for taxable years beginning after December 31, 1991.

The provisions of sections 1936 and 1937 of the Comprehensive National Energy Policy Act of 1992, Public Law Number 102-486, and the provisions of sections 13101, 13114, 13122, 13141, 13150, 13151, 13174, 13239, 13301, and 13442 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1992, shall be in effect for taxable years beginning after December 31, 1992.

The provisions of sections 13116, 13121, 13206, 13210, 13222, 13223, 13231, 13232, 13233, 13239, 13262, and 13321 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1993, shall be in effect for taxable years beginning after December 31, 1993.

The provision of section 741 of Legislation to Implement Uruguay Round of General Agreement on Tariffs and Trade, Public Law Number 103-465, and the provisions of sections 1, 2, and 3, of the Self-Employed Health Insurance Act of 1995, Public Law Number 104-7, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1994, shall be in effect for taxable years beginning after December 31, 1994.

Except as otherwise provided, references to the Internal Revenue Code in subdivisions 19a to 19g mean the code in effect for purposes of determining net income for the applicable year.

[For text of subd 19a, see M.S.1994]

**Subd. 19b. Subtractions from federal taxable income.** For individuals, estates, and trusts, there shall be subtracted from federal taxable income:

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

(2) if included in federal taxable income, the amount of any overpayment of income tax to Minnesota or to any other state, for any previous taxable year, whether the amount is received as a refund or as a credit to another taxable year's income tax liability;

(3) the amount paid to others not to exceed \$650 for each dependent in grades kindergarten to 6 and \$1,000 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. In order to qualify for the subtraction under this clause the taxpayer must elect to itemize deductions under section 63(e) of the Internal Revenue Code;

(4) to the extent included in federal taxable income, distributions from a qualified governmental pension plan, an individual retirement account, simplified employee pension, or qualified plan covering a self-employed person that represent a return of contributions that were included in Minnesota gross income in the taxable year for which the contributions were made but were deducted or were not included in the computation of federal adjusted gross income. The distribution shall be allocated first to return of contributions until the contributions included in Minnesota gross income have been exhausted. This subtraction applies only to contributions made in a taxable year prior to 1985;

(5) income as provided under section 290.0802;

(6) the amount of unrecovered accelerated cost recovery system deductions allowed under subdivision 19g;

(7) to the extent included in federal adjusted gross income, income realized on disposition of property exempt from tax under section 290.491;

(8) to the extent not deducted in determining federal taxable income, the amount paid for health insurance of self-employed individuals as determined under section 162(l) of the Internal Revenue Code, except that the 25 percent limit does not apply. If the taxpayer deducted insurance payments under section 213 of the Internal Revenue Code of 1986, the subtraction under this clause must be reduced by the lesser of:

(i) the total itemized deductions allowed under section 63(d) of the Internal Revenue Code, less state, local, and foreign income taxes deductible under section 164 of the Internal Revenue Code and the standard deduction under section 63(c) of the Internal Revenue Code; or

(ii) the lesser of (A) the amount of insurance qualifying as "medical care" under section 213(d) of the Internal Revenue Code to the extent not deducted under section 162(1) of the Internal Revenue Code or excluded from income or (B) the total amount deductible for medical care under section 213(a); and

(9) the exemption amount allowed under Laws 1995, chapter 255, article 3, section 2, subdivision 3.

[For text of subd 19c, see M.S.1994]

**Subd. 19d. Corporations; modifications decreasing federal taxable income.** For corporations, there shall be subtracted from federal taxable income after the increases provided in subdivision 19c:

(1) the amount of foreign dividend gross-up added to gross income for federal income tax purposes under section 78 of the Internal Revenue Code;

(2) the amount of salary expense not allowed for federal income tax purposes due to claiming the federal jobs credit under section 51 of the Internal Revenue Code;

(3) any dividend (not including any distribution in liquidation) paid within the taxable year by a national or state bank to the United States, or to any instrumentality of the United States exempt from federal income taxes, on the preferred stock of the bank owned by the United States or the instrumentality;

(4) amounts disallowed for intangible drilling costs due to differences between this chapter and the Internal Revenue Code in taxable years beginning before January 1, 1987, as follows:

(i) to the extent the disallowed costs are represented by physical property, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7, subject to the modifications contained in subdivision 19e; and

(ii) to the extent the disallowed costs are not represented by physical property, an amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section 290.09, subdivision 8;

(5) the deduction for capital losses pursuant to sections 1211 and 1212 of the Internal Revenue Code, except that:

(i) for capital losses incurred in taxable years beginning after December 31, 1986, capital loss carrybacks shall not be allowed;

(ii) for capital losses incurred in taxable years beginning after December 31, 1986, a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be allowed;

(iii) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryback to each of the three taxable years preceding the loss year, subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

(iv) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryover to each of the five taxable years succeeding the loss year to the extent such loss was not used in a prior taxable year and subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed;

(6) an amount for interest and expenses relating to income not taxable for federal income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or 291 of the Internal Revenue Code in computing federal taxable income;

(7) in the case of mines, oil and gas wells, other natural deposits, and timber for which percentage depletion was disallowed pursuant to subdivision 19c, clause (11), a reasonable allowance for depletion based on actual cost. In the case of leases the deduction must be apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held in trust, the allowable deduction must be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the trust, or if there is no provision in the instrument, on the basis of the trust's income allocable to each;

(8) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7;

(9) the amount included in federal taxable income attributable to the credits provided in Minnesota Statutes 1986, section 273.1314, subdivision 9, or Minnesota Statutes, section 469.171, subdivision 6;

(10) amounts included in federal taxable income that are due to refunds of income, excise, or franchise taxes based on net income or related minimum taxes paid by the corpora-

tion to Minnesota, another state, a political subdivision of another state, the District of Columbia, or a foreign country or possession of the United States to the extent that the taxes were added to federal taxable income under section 290.01, subdivision 19c, clause (1), in a prior taxable year;

(11) the following percentage of royalties, fees, or other like income accrued or received from a foreign operating corporation or a foreign corporation which is part of the same unitary business as the receiving corporation:

Taxable Year		
Beginning After	.....	Percentage
December 31, 1988	.....	50 percent
December 31, 1990	.....	80 percent;

(12) income or gains from the business of mining as defined in section 290.05, subdivision 1, clause (a), that are not subject to Minnesota franchise tax;

(13) the amount of handicap access expenditures in the taxable year which are not allowed to be deducted or capitalized under section 44(d)(7) of the Internal Revenue Code;

(14) the amount of qualified research expenses not allowed for federal income tax purposes under section 280C(c) of the Internal Revenue Code, but only to the extent that the amount exceeds the amount of the credit allowed under section 290.068; and

(15) the amount of salary expenses not allowed for federal income tax purposes due to claiming the Indian employment credit under section 45A(a) of the Internal Revenue Code.

*[For text of subs 19e to 30, see M.S.1994]*

**Subd. 31. Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through April 15, 1995.

**History:** 1995 c 186 s 55,56; 1995 c 255 art 3 s 1; 1995 c 264 art 1 s 2,4; art 10 s 6

### **290.015 MINIMUM CONTACTS REQUIRED FOR JURISDICTION TO TAX TRADE OR BUSINESS.**

Subdivision 1. **General rule.** (a) Except as provided in subdivision 3, a person that conducts a trade or business that has a place of business in this state, regularly has employees or independent contractors conducting business activities on its behalf in this state, or owns or leases real property located in this state or tangible personal property located in this state as defined in section 290.191, subdivision 6, paragraph (e), is subject to the taxes imposed by this chapter.

(b) Except as provided in subdivision 3, a person that conducts a trade or business not described in paragraph (a) is subject to the taxes imposed by this chapter if the trade or business obtains or regularly solicits business from within this state, without regard to physical presence in this state.

(c) For purposes of paragraph (b), business from within this state includes, but is not limited to:

(1) sales of products or services of any kind or nature to customers in this state who receive the product or service in this state;

(2) sales of services which are performed from outside this state but the services are received in this state;

(3) transactions with customers in this state that involve intangible property and result in income flowing to the person from within this state as provided in section 290.191;

(4) leases of tangible personal property that is located in this state as defined in section 290.191, subdivision 6, paragraph (e);

(5) sales and leases of real property located in this state; and

(6) if a financial institution, deposits received from customers in this state.

(d) For purposes of paragraph (b), solicitation includes, but is not limited to:

(1) the distribution, by mail or otherwise, without regard to the state from which such distribution originated or in which the materials were prepared, of catalogs, periodicals, advertising flyers, or other written solicitations of business to customers in this state;

- (2) display of advertisements on billboards or other outdoor advertising in this state;
- (3) advertisements in newspapers published in this state;
- (4) advertisements in trade journals or other periodicals, the circulation of which is primarily within this state;
- (5) advertisements in a Minnesota edition of a national or regional publication or a limited regional edition of which this state is included of a broader regional or national publication which are not placed in other geographically defined editions of the same issue of the same publication;
- (6) advertisements in regional or national publications in an edition which is not by its contents geographically targeted to Minnesota, but which is sold over the counter in Minnesota or by subscription to Minnesota residents;
- (7) advertisements broadcast on a radio or television station located in Minnesota; or
- (8) any other solicitation by telegraph, telephone, computer database, cable, optic, microwave, or other communication system.

*[For text of subs 2 to 5, see M.S.1994]*

**History:** 1995 c 264 art 10 s 7

### **290.032 LUMP SUM DISTRIBUTION TAX.**

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

Subd. 2. The amount of tax imposed by subdivision 1 shall be computed in the same way as the tax imposed under section 402(d) of the Internal Revenue Code, except that the initial separate tax shall be an amount equal to five times the tax which would be imposed by section 290.06, subdivision 2c, if the recipient was an unmarried individual, and the taxable net income was an amount equal to one-fifth 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(d) of the Internal Revenue Code to paragraph (1)(A) thereof shall instead be references to subdivision 1, and the excess, if any, of the subtraction base amount over federal taxable income for a qualified individual as provided under section 290.0802, subdivision 2.

*[For text of subd 3, see M.S.1994]*

**History:** 1995 c 264 art 15 s 1,2

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

*[For text of subs 1 and 2, see M.S.1994]*

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

- (i) section 527 (dealing with political organizations);
- (ii) section 528 (dealing with certain homeowners associations);
- (iii) sections 511 to 515 (dealing with unrelated business income);
- (iv) section 521 (dealing with farmers' cooperatives); and
- (v) section 6033(e)(2) (dealing with lobbying expense); but notwithstanding this subdivision, shall be considered an organization exempt from income tax for the purposes of any law which refers to organizations exempt from income taxes.

(b) The tax shall be imposed on the taxable income of political organizations or homeowner associations or the unrelated business taxable income, as defined in section 512 of the Internal Revenue Code, of organizations defined in section 511 of the Internal Revenue Code, provided that the tax is not imposed on:

(1) advertising revenues from a newspaper published by an organization described in section 501(c)(4) of the Internal Revenue Code; or

(2) revenues from lawful gambling authorized under chapter 349 that are expended for purposes that qualify for the deduction for charitable contributions under section 170 of the Internal Revenue Code, disregarding the limitation under section 170(b)(2), but only to the extent the contributions are not deductible in computing federal taxable income.

The tax shall be at the corporate rates. The tax shall only be imposed on income and deductions assignable to this state under sections 290.17 to 290.20. To the extent deducted in computing federal taxable income, the deductions contained in section 290.21 shall not be allowed in computing Minnesota taxable net income.

(c) The tax shall be imposed on organizations subject to federal tax under section 6033(e)(2) of the Internal Revenue Code, in an amount equal to the corporate tax rate multiplied by the amount of lobbying expenses taxed under section 6033(e)(2) which are attributable to lobbying the Minnesota state government.

*[For text of subs 4 and 8, see M.S.1994]*

**History:** 1995 c 186 s 57

## 290.06 RATES OF TAX; CREDITS.

*[For text of subd 1, see M.S.1994]*

**Subd. 2c. Schedules of rates for individuals, estates, and trusts.** (a) The income taxes imposed by this chapter upon married individuals filing joint returns and surviving spouses as defined in section 2(a) of the Internal Revenue Code must be computed by applying to their taxable net income the following schedule of rates:

- (1) On the first \$19,910, 6 percent;
- (2) On all over \$19,910, but not over \$79,120, 8 percent;
- (3) On all over \$79,120, 8.5 percent.

Married individuals filing separate returns, estates, and trusts must compute their income tax by applying the above rates to their taxable income, except that the income brackets will be one-half of the above amounts.

(b) The income taxes imposed by this chapter upon unmarried individuals must be computed by applying to taxable net income the following schedule of rates:

- (1) On the first \$13,620, 6 percent;
- (2) On all over \$13,620, but not over \$44,750, 8 percent;
- (3) On all over \$44,750, 8.5 percent.

(c) The income taxes imposed by this chapter upon unmarried individuals qualifying as a head of household as defined in section 2(b) of the Internal Revenue Code must be computed by applying to taxable net income the following schedule of rates:

- (1) On the first \$16,770, 6 percent;
- (2) On all over \$16,770, but not over \$67,390, 8 percent;
- (3) On all over \$67,390, 8.5 percent.

(d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year is less than an amount determined by the commissioner must 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.

(e) An individual who is not a Minnesota resident for the entire year must compute the individual's Minnesota income tax as provided in this subdivision. After the application of the nonrefundable credits provided in this chapter, the tax liability must then be multiplied by a fraction in which:

(1) The numerator is the individual's Minnesota source federal adjusted gross income as defined in section 62 of the Internal Revenue Code after applying the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

(2) the denominator is the individual's federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, as amended through April 15, 1995, increased by the addition required for interest income from non-Minnesota state and municipal bonds under section 290.01, subdivision 19a, clause (1).

*[For text of subs 2d to 24, see M.S.1994]*

**History:** 1995 c 264 art 1 s 4

### **290.067 DEPENDENT CARE CREDIT.**

Subdivision 1. **Amount of credit.** (a) A taxpayer may take as a credit against the tax due from the taxpayer and a spouse, if any, under this chapter an amount equal to the dependent care credit for which the taxpayer is eligible pursuant to the provisions of section 21 of the Internal Revenue Code subject to the limitations provided in subdivision 2 except that in determining whether the child qualified as a dependent, income received as an aid to families with dependent children grant or allowance to or on behalf of the child must not be taken into account in determining whether the child received more than half of the child's support from the taxpayer, and the provisions of section 32(b)(1)(D) of the Internal Revenue Code do not apply.

(b) If a child who has not attained the age of six years at the close of the taxable year is cared for at a licensed family day care home operated by the child's parent, the taxpayer is deemed to have paid employment-related expenses. If the child is 16 months old or younger at the close of the taxable year, the amount of expenses deemed to have been paid equals the maximum limit for one qualified individual under section 21(c) and (d) of the Internal Revenue Code. If the child is older than 16 months of age but has not attained the age of six years at the close of the taxable year, the amount of expenses deemed to have been paid equals the amount the licensee would charge for the care of a child of the same age for the same number of hours of care.

(c) If a married couple:

(1) has a child who has not attained the age of one year at the close of the taxable year;

(2) files a joint tax return for the taxable year; and

(3) does not participate in a dependent care assistance program as defined in section 129 of the Internal Revenue Code, in lieu of the actual employment related expenses paid for that child under paragraph (a) or the deemed amount under paragraph (b), the lesser of (i) the combined earned income of the couple or (ii) \$2,400 will be deemed to be the employment related expense paid for that child. The earned income limitation of section 21(d) of the Internal Revenue Code shall not apply to this deemed amount. These deemed amounts apply regardless of whether any employment-related expenses have been paid.

(d) If the taxpayer is not required and does not file a federal individual income tax return for the tax year, no credit is allowed for any amount paid to any person unless:

(1) the name, address, and taxpayer identification number of the person are included on the return claiming the credit; or

(2) if the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence does not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information required.

In the case of a nonresident, part-year resident, or a person who has earned income not subject to tax under this chapter, the credit determined under section 21 of the Internal Revenue Code must be allocated based on the ratio by which the earned income of the claimant and the claimant's spouse from Minnesota sources bears to the total earned income of the claimant and the claimant's spouse.

*[For text of subs 2 to 4, see M.S.1994]*

**History:** 1995 c 1 s 4; 1995 c 264 art 10 s 8

**290.191 APPORTIONMENT OF NET INCOME.**

Subdivision 1. **General rule.** (a) Except as otherwise provided in section 290.17, subdivision 5, the net income from a trade or business carried on partly within and partly without this state must be apportioned to this state as provided in this section.

(b) For purposes of this section, "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 or any foreign country.

*[For text of subs 2 to 4, see M.S.1994]*

**Subd. 5. Determination of sales factor.** For purposes of this section, the following rules apply in determining the sales factor.

(a) The sales factor includes all sales, gross earnings, or receipts received in the ordinary course of the business, except that the following types of income are not included in the sales factor:

- (1) interest;
- (2) dividends;
- (3) sales of capital assets as defined in section 1221 of the Internal Revenue Code;
- (4) sales of property used in the trade or business, except sales of leased property of a type which is regularly sold as well as leased;
- (5) sales of debt instruments as defined in section 1275(a)(1) of the Internal Revenue Code or sales of stock; and
- (6) royalties, fees, or other like income of a type which qualify for a subtraction from federal taxable income under section 290.01, subdivision 19(d)(11).

(b) Sales of tangible personal property are made within this state if the property is received by a purchaser at a point within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point, other conditions of the sale, or the ultimate destination of the property.

(c) Tangible personal property delivered to a common or contract carrier or foreign vessel for delivery to a purchaser in another state or nation is a sale in that state or nation, regardless of f.o.b. point or other conditions of the sale.

(d) Notwithstanding paragraphs (b) and (c), when intoxicating liquor, wine, fermented malt beverages, cigarettes, or tobacco products are sold to a purchaser who is licensed by a state or political subdivision to resell this property only within the state of ultimate destination, the sale is made in that state.

(e) Sales made by or through a corporation that is qualified as a domestic international sales corporation under section 992 of the Internal Revenue Code are not considered to have been made within this state.

(f) Sales, rents, royalties, and other income in connection with real property is attributed to the state in which the property is located.

(g) Receipts from the lease or rental of tangible personal property, including finance leases and true leases, must be attributed to this state if the property is located in this state and to other states if the property is not located in this state. Moving property including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment is located in this state if:

- (1) the operation of the property is entirely within this state; or
- (2) the operation of the property is in two or more states and the principal base of operations from which the property is sent out is in this state.

(h) Royalties and other income not described in paragraph (a), clause (6), received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or similar items, must be attributed to the state in which the property is used by the purchaser. If the property is used in more than one state, the royalties or other income must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income must be excluded from both the numerator and the denominator. Intangible property is used

in this state if the purchaser uses the intangible property or the rights therein in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.

(i) Sales of intangible property are made within the state in which the property is used by the purchaser. If the property is used in more than one state, the sales must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the sale must be excluded from both the numerator and the denominator of the sales factor. Intangible property is used in this state if the purchaser used the intangible property in the regular course of its business operations in this state.

(j) Receipts from the performance of services must be attributed to the state where the services are received. For the purposes of this section, receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where it has a fixed place of doing business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of doing business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.

**Subd. 6. Determination of receipts factor for financial institutions.** (a) For purposes of this section, the rules in this subdivision and subdivision 8 apply in determining the receipts factor for financial institutions.

(b) "Receipts" for this purpose means gross income, including net taxable gain on disposition of assets, including securities and money market instruments, when derived from transactions and activities in the regular course of the taxpayer's trade or business.

(c) "Money market instruments" means federal funds sold and securities purchased under agreements to resell, commercial paper, banker's acceptances, and purchased certificates of deposit and similar instruments to the extent that the instruments are reflected as assets under generally accepted accounting principles.

(d) "Securities" means United States Treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate stock, bonds, and other securities, participations in securities backed by mortgages held by United States or state government agencies, loan-backed securities and similar investments to the extent the investments are reflected as assets under generally accepted accounting principles.

(e) Receipts from the lease or rental of real or tangible personal property, including both finance leases and true leases, must be attributed to this state if the property is located in this state. Tangible personal property that is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, is considered to be located in a state if:

(1) the operation of the property is entirely within the state; or

(2) the operation of the property is in two or more states, but the principal base of operations from which the property is sent out is in the state.

(f) Interest income and other receipts from assets in the nature of loans that are secured primarily by real estate or tangible personal property must be attributed to this state if the security property is located in this state under the principles stated in paragraph (e).

(g) Interest income and other receipts from consumer loans not secured by real or tangible personal property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means, must be attributed to this state.

(h) Interest income and other receipts from commercial loans and installment obligations that are unsecured by real or tangible personal property or secured by intangible property must be attributed to this state if the proceeds of the loan are to be applied in this state. If it cannot be determined where the funds are to be applied, the income and receipts are attributed to the state in which the office of the borrower from which the application would be

made in the regular course of business is located. If this cannot be determined, the transaction is disregarded in the apportionment formula.

(i) Interest income and other receipts from a participating financial institution's portion of participation and syndication loans must be attributed under paragraphs (e) to (h). A participation loan is an arrangement in which a lender makes a loan to a borrower and then sells, assigns, or otherwise transfers all or a part of the loan to a purchasing financial institution. A syndication loan is a loan transaction involving multiple financial institutions in which all the lenders are named as parties to the loan documentation, are known to the borrower, and have privity of contract with the borrower.

(j) Interest income and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees must be attributed to the state to which the card charges and fees are regularly billed.

(k) Merchant discount income derived from financial institution credit card holder transactions with a merchant must be attributed to the state in which the merchant is located. In the case of merchants located within and outside the state, only receipts from merchant discounts attributable to sales made from locations within the state are attributed to this state. It is presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer.

(l) Receipts from the performance of fiduciary and other services must be attributed to the state in which the services are received. For the purposes of this section, services provided to a corporation, partnership, or trust must be attributed to a state where it has a fixed place of doing business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust does not have a fixed place of doing business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.

(m) Receipts from the issuance of travelers checks and money orders must be attributed to the state in which the checks and money orders are purchased.

(n) Receipts from investments of a financial institution in securities and from money market instruments must be apportioned to this state based on the ratio that total deposits from this state, its residents, including any business with an office or other place of business in this state, its political subdivisions, agencies, and instrumentalities bear to the total deposits from all states, their residents, their political subdivisions, agencies, and instrumentalities. In the case of an unregulated financial institution subject to this section, these receipts are apportioned to this state based on the ratio that its gross business income, excluding such receipts, earned from sources within this state bears to gross business income, excluding such receipts, earned from sources within all states. For purposes of this subdivision, deposits made by this state, its residents, its political subdivisions, agencies, and instrumentalities must be attributed to this state, whether or not the deposits are accepted or maintained by the taxpayer at locations within this state.

(o) A financial institution's interest in property described in section 290.015, subdivision 3, paragraph (b), is included in the receipts factor in the same manner as assets in the nature of securities or money market instruments are included in paragraph (n).

*[For text of subs 8 to 12, see M.S.1994]*

**History:** 1995 c 264 art 10 s 9-11

## 290.92 TAX WITHHELD AT SOURCE UPON WAGES.

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

(2) **Payroll period.** For purposes of this section the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by the employee's employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(3) **Employee.** For purposes of this section the term "employee" means any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, and every nonresident individual performing services within the state of Minnesota, the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation, and an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(4) **Employer.** For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, limited liability companies, and corporations transacting business in or deriving any income from sources within the state of Minnesota for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have legal control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having legal control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under section 290.05 and further includes, but is not limited to, officers of corporations who have legal control, either individually or jointly with another or others, of the payment of the wages.

(5) **Number of withholding exemptions claimed.** For purposes of this section, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under subdivision 5, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

*[For text of subs 2a to 5a, see M.S.1994]*

**Subd. 6a. Failure to comply with withholding provisions.** (a) When a 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 rules fails to deduct, withhold, or pay over the tax, or fails to make deposits or payments of the tax and is notified of the failure by notice served upon the person in the manner prescribed for service of a summons in civil actions, then the requirements of paragraph (b) shall be met. In the case of a corporation, partnership or trust, notice served upon an officer, partner or trustee shall, for purposes of this subdivision, be considered notice served upon the corporation, partnership, or trust and their officers, partners, or trustees.

(b) A person who is required to deduct, withhold, pay over, or deposit a tax imposed by this chapter, if notice has been served upon that person in accordance with paragraph (a), shall after that date deduct, withhold, and collect the 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 the taxes in a separate account in a bank, savings bank or savings association and shall keep the amount of the taxes in that account until paid to the state of Minnesota. The account constitutes and must be designated as a special fund in trust for the state of Minnesota payable to the state of Minnesota by that person as trustee. The person upon whom notice is served shall notify the commissioner of revenue in writing of the name and address of the bank, savings bank or savings association wherein the account is kept, together with other information the commissioner may require. In lieu of the trust fund account, the commissioner may, when necessary 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 of it, security in a form and in an amount the commissioner determines, not more than twice the estimated average liability for future monthly withholding tax periods.

(c) The commissioner of revenue, on being satisfied with respect to any notification made under paragraph (a) that the requirements of law and rules with respect to the taxes imposed by this chapter have been and will be complied with, may cancel the notification. The cancellation shall take effect at the time specified in the notice of the cancellation. All

notices authorized or required under this subdivision must be in the form the commissioner determines.

*[For text of subs 6b to 22, see M.S.1994]*

**Subd. 23. Withholding by employer of delinquent taxes.** (1) The commissioner may, within five years after the date of assessment of the tax, or if a lien has been filed under section 270.69, within the statutory period for enforcement of the lien, give notice to any employer deriving income which has a taxable situs in this state regardless of whether the income is exempt from taxation, that an employee of that employer is delinquent in a certain amount with respect to any state taxes, including penalties, interest, and costs. The commissioner can proceed under this subdivision only if the tax is uncontested or if the time for appeal of the tax has expired. The commissioner shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer, at the taxpayer's last known address, a written notice of (a) the amount of taxes, interest, and penalties due from the taxpayer and demand for their payment, and (b) the commissioner's intention to require additional withholding by the taxpayer's employer pursuant to this subdivision. The effect of the notice shall expire 180 days after it has been mailed to the taxpayer provided that the notice may be renewed by mailing a new notice which is in accordance with this subdivision. The renewed notice shall have the effect of reinstating the priority of the original claim. The notice to the taxpayer shall be in substantially the same form as that provided in section 571.72. The notice shall further inform the taxpayer of the wage exemptions contained in section 550.37, subdivision 14. If no statement of exemption is received by the commissioner within 30 days from the mailing of the notice, the commissioner may proceed under this subdivision. The notice to the taxpayer's employer may be served by mail or by delivery by an employee of the department of revenue and shall be in substantially the same form as provided in section 571.75. Upon receipt of notice, the employer shall withhold from compensation due or to become due to the employee, the total amount shown by the notice, subject to the provisions of section 571.922. The employer shall continue to withhold each pay period until the notice is released by the commissioner under section 270.709. Upon receipt of notice by the employer, the claim of the state of Minnesota shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and the employee for withholding a portion of the total amount due the employee each pay period, until the total amount shown by the notice plus accrued interest has been withheld.

The "compensation due" any employee is defined in accordance with the provisions of section 571.921. The maximum withholding allowed under this subdivision for any one pay period shall be decreased by any amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the department of the amounts and the facts relating to such assignments within ten days after the service of the notice of delinquency on the form provided by the department of revenue as noted in this subdivision.

(2) If the employee ceases to be employed by the employer before the full amount set forth in a notice of delinquency plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount withheld. No employer may discharge any employee by reason of the fact that the commissioner has proceeded under this subdivision. If an employer discharges an employee in violation of this provision, the employee shall have the same remedy as provided in section 571.927, subdivision 2.

(3) Within ten days after the expiration of such pay period, the employer shall remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during each pay period under this subdivision.

(4) Clauses (1), (2), and (3), except provisions imposing a liability on the employer for failure to withhold or remit, shall apply to cases in which the employer is the United States or any instrumentality thereof or this state or any municipality or other subordinate unit thereof.

(5) The commissioner shall refund to the employee excess amounts withheld from the employee under this subdivision. If any excess results from payments by the employer be-

cause of willful failure to withhold or remit as prescribed in clause (3), the excess attributable to the employer's payment shall be refunded to the employer.

(6) Employers required to withhold delinquent taxes, penalties, interest, and costs under this subdivision shall not be required to compute any additional interest, costs or other charges to be withheld.

(7) The collection remedy provided to the commissioner by this subdivision shall have the same legal effect as if it were a levy made pursuant to section 270.70.

*[For text of subs 24 to 29, see M.S.1994]*

**History:** 1995 c 202 art 1 s 25; 1995 c 264 art 10 s 12; art 13 s 13

## **290.9201 TAX ON NONRESIDENT ENTERTAINERS.**

*[For text of subs 1 and 2, see M.S.1994]*

Subd. 3. **Credit against tax.** Each calendar year an entertainment entity may take a non-refundable credit of \$120 against the tax imposed by this section.

*[For text of subs 6 to 11, see M.S.1994]*

**History:** 1995 c 264 art 10 s 13