

**290.9727 TAX ON CERTAIN BUILT-IN GAINS.**

Subdivision 1. **Tax imposed.** For an "S" corporation electing S corporation status pursuant to section 1362 of the Internal Revenue Code after December 31, 1986, and having a recognized built-in gain as defined in section 1374 of the Internal Revenue Code, there is imposed a tax on the taxable income of such S corporation, as defined in this section, at the rate prescribed by section 290.06, subdivision 1. This subdivision does not apply to any corporation having an S election in effect for each of its taxable years. An S corporation and any predecessor corporation must be treated as one corporation for purposes of the preceding sentence.

Subd. 1a. **Asset transfers.** In the case of the transfer of assets from a C corporation to an S corporation as described in section 1374(d)(8) of the Internal Revenue Code, a tax is imposed on the taxable income of the S corporation, as defined in this section, at the rate prescribed in section 290.06, subdivision 1.

Subd. 2. **Taxable income.** For purposes of this section, taxable income means taxable net income less the deduction for net operating loss carryforwards as provided by this section.

Subd. 3. **Taxable net income.** For purposes of this section, taxable net income means the lesser of:

(1) the recognized built-in gains of the S corporation for the taxable year, as determined under section 1374 of the Internal Revenue Code, subject to the modifications provided in section 290.0135, that are allocable to this state under section 290.17, 290.191, or 290.20; or

(2) the amount of the S corporation's federal taxable income, as determined under section 1374(d)(4) of the Internal Revenue Code, subject to the provisions of sections 290.0131 to 290.0135, that is allocable to this state under section 290.17, 290.191, or 290.20.

Subd. 4. **Net operating loss carryforward.** A net operating loss carryforward, as determined under section 290.095, arising in a taxable year before the corporation elected S corporation status, shall be allowed as a deduction against the lesser of the amounts referred to in subdivision 3, clauses (1) and (2). For purposes of determining the amount of any such loss that may be carried to later taxable years, the lesser of the amounts referred to in subdivision 3, clauses (1) and (2), shall be treated as taxable income.

Subd. 5. **Credit carryforward.** Any credit carryforward allowed under this chapter and arising in a taxable year in which the corporation was a C corporation is allowed as a credit against the tax imposed by this section.

**History:** 1988 c 719 art 2 s 47; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; art 7 s 21-24; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24; 1997 c 231 art 6 s 18; 2003 c 2 art 1 s 32; 2016 c 158 art 3 s 24