

permitted to practice as an architect, engineer or land surveyor. The same exemptions shall apply to corporations and partnerships as apply to individuals under this Act."

Sec. 6. **May appeal to district court.**—Any person aggrieved by any ruling or order of the Board made under the provisions of this act, may appeal therefrom to any district court of the state by serving written notice of such intention upon the secretary of the Board, specifying such court, within thirty days after the same is made. The secretary of the board shall thereupon file with the clerk of such court a certified copy of the order or rulings or findings of fact upon which the same are based, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved on said appeal, such ruling or order of the board shall be stayed pending the said appeal.

Sec. 7. **Effective July 1, 1933.**—This Act shall take effect and be in force from and after its passage but registrations required hereunder by persons heretofore practicing in this state may be made at any time before July 1, 1933.

Approved April 22, 1933.

CHAPTER 405—H. F. No. 367

An act raising revenues, imposing incomes taxes and franchise or privilege taxes measured by income, providing certain exemptions and exceptions from such taxes, providing for the assessment, levy and collection thereof, and the distribution of the proceeds therefrom, appropriating money for the administration thereof, providing penalties for violations thereof and defining certain crimes in connection therewith and imposing penalties therefor.

Be it enacted by the Legislature of the State of Minnesota:

ARTICLE I.—General Definitions.

Section 1. **Definitions.**—When used in this Act—

(a) The term "person" shall include individuals, fiduciaries, estates and trust, and partnerships not included in the definition of corporation.

(b) The term "partnership" shall mean any partnership not of the class included in the definition of corporations.

(c) The term "corporation" shall include joint stock companies and corporations existing under the laws of any state or county; limited partnerships organized under Mason's Minnesota Statutes of 1927, Chapter 57, and Acts amendatory thereof, and partnerships similar in nature organized under the laws of other states; associations (other than ordinary partnerships) and common law trusts organized or conducted for profit.

(d) The term "domestic" when applied to a corporation shall mean created or organized in Minnesota or under its laws, and the term "foreign" when thus applied shall mean a corporation other than a domestic corporation.

(e) The term "taxpayer" shall mean any person or corporation subject to a tax imposed by this Act.

(f) The term "resident" shall mean any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of a tax year who shall not during the whole of such tax year have been domiciled outside the state.

(g) The term "fiduciary" shall mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person or corporation.

(h) The term "taxable year" shall mean the period for which the taxes levied by this Act are imposed. It shall be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which such return is made. The term "fiscal year" shall mean an accounting period of twelve months ending on the last day of any month other than December.

(i) The term "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which net income is computed for the purposes of the taxes imposed by this Act; and the terms "received" or "received or accrued" shall be similarly construed.

(j) The terms "stock" or "share" shall mean the interest of a member in a corporation however evidenced; and the terms "stockholder" or "shareholder" shall mean the owner of any such "stock" or "share."

(k) The terms "state" or "this state" shall, unless the context requires otherwise, mean the State of Minnesota.

(l) The term "includes" and its derivatives, when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(m) The term "Commission" shall mean the Minnesota Tax Commission.

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

(o) Whenever in this Act the estate of a decedent or a trust is referred to as a taxable person, or a duty is imposed on such estate or trust, the reference may be construed as meaning the fiduciary in charge of the property of such estate or trust, and the duty shall be treated as imposed on such fiduciary.

(p) The term "comptroller" shall mean the comptroller of the Commission of Administration and Finance provided for in Section 1 of Article III, Chapter 426 of the Laws of Minnesota of 1925.

ARTICLE II—*Imposition of Taxes.*

Sec. 2. Income tax imposed.—There is hereby imposed on every domestic and foreign corporation an annual tax for the privilege of existing as a corporation or of transacting any local business within this state during any part of its taxable year, measured by its taxable net income for such year, computed in the manner and at the rates hereinafter provided.

Sec. 3. Rate of tax.—(a) There is hereby imposed an annual tax for each taxable year upon the taxable net income for such year of every taxpayer specified in sub-section (b) hereof, computed in the manner and at the rates hereinafter provided.

(b) The tax imposed by sub-section (a) shall apply in the case of a domestic and foreign corporation whose business within this state during any taxable year consists exclusively of interstate commerce; to resident and non-resident individuals; to the estates of decedents dying domiciled within or without this state; to trusts (except so far as these are taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations; provided that no non-resident individual shall be taxed on his income from compensation for labor or personal service within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year.

Sec. 4. Date of liability.—(a) The liability for the tax imposed by Section 2 shall arise upon the first day of the taxable year upon which the corporation exercises any of the privileges specified

in Section 2. The liability for the tax imposed by subsection (a) of Section 3 shall arise concurrently with the receipt or accrual of income during the taxable year. These provisions shall in no way affect the determination of the amount of such taxes, the time for making returns, and the time for paying such taxes.

(b) The liability of any taxpayer shall remain unaffected by the fact that such taxpayer, or the title, possession, custody or control of his business or property, is in the care of a guardian, trustee, receiver, conservator or any other person acting in any fiduciary capacity for such taxpayer or in reference to his business or property, unless the taxes imposed by this Act are specifically imposed by this Act upon any such guardian, trustee, receiver, conservator or fiduciary.

Sec. 5. **Exemptions from act.**—The following corporations and organizations shall be exempted from taxation under this Act:

(a) National and state banks.

(b) Corporations engaged in the business of mining or producing iron ore; but if any such corporation engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in Mason's Minnesota Statutes of 1927, Section 2392-2) shall not be considered as income from the business of mining or producing iron ore within the meaning of this section.

(c) Insurance companies however or wherever organized, and regardless of the risks insured against.

(d) Fraternal beneficiary associations wherever organized, and public department relief associations of public employees of this State or of any of its political subdivisions.

(e) Co-operative or mutual rural telephone associations.

(f) Corporations engaged in the business of loaning money to home builders for home building purposes, but if any such corporation is engaged in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or other business or activity.

(g) Labor, agricultural and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(h) Farmers, fruit growers, and like organizations organized and operated as sales agents for the purpose of marketing products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity or value of produce furnished by them; and farmers' co-operative associations, however organized, so far as engaged in marketing farm products or in buying and selling farm products and supplies without profit, and co-operative associations organized under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed.

(i) Corporations operating or conducting public burying grounds, public school houses, public hospitals, academies, colleges, universities, seminaries of learning, churches, houses of worship, and institutions of purely public charity, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(j) Corporations organized for exclusively scientific, literary or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(k) Business leagues and commercial clubs, not organized for profit and no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(l) Clubs organized and operated exclusively for pleasure, recreation or other nonprofitable purposes, no part of the net income of which inures to the benefit of any private member, stockholder or individual;

(m) Any corporation all the stock of which is owned by the United States or which may be exempt from a state franchise or income tax by federal law;

(n) The State of Minnesota and all its political or governmental subdivisions, municipalities, agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions.

Sec. 6. Rate of tax.—The taxes imposed by this Act shall be at the following rates on the taxable net income in excess of the applicable credits against net income hereinafter provided for:

(a) On the first \$1000 thereof, one per centum.

(b) On the second \$1000 thereof, one and one-fourth per centum.

(c) On the third \$1000 thereof, one and one-half per centum.

(d) On the fourth \$1000 thereof, one and three-fourths per centum.

(e) On the fifth \$1000 thereof, two per centum.

(f) On the sixth \$1000 thereof, two and one-half per centum.

(g) On the seventh \$1000 thereof, three per centum.

(h) On the eighth \$1000 thereof, three and one-half per centum.

(i) On the ninth \$1000 thereof, four per centum.

(j) On the tenth \$1000 thereof, four and one-half per centum.

(k) On the remainder thereof five per centum.

Sec. 7. Tax to be imposed for 1933.—(a) The first taxable year for all taxpayers whose taxable year is a calendar year shall be the calendar year 1933.

(b) The first taxable year for all taxpayers whose taxable year is a fiscal year shall be the fiscal year ending during 1933, and the tax for such first taxable year shall in these cases be computed on the basis of the taxable net income received or accrued on and after January 1, 1933, in accordance with the method provided for by Section 31(a).

Sec. 8. Direct tax in certain cases.—The tax for the first taxable year in the case of taxpayers taxable under Section 2 whose taxable year ended prior to the date on which this Act takes effect shall be a tax directly on its taxable net income instead of on the exercise of the privileges specified in said section during such first taxable year.

ARTICLE III.—*Computation of Net Income.*

Sec. 9. Taxable net income.—(a) Net income and taxable net income shall be computed upon the basis of the taxpayer's annual accounting period, and, except as specifically provided to the contrary by this Act, in accordance with the method of accounting regularly employed in keeping the taxpayer's books; but if no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this Act, the computation shall be made in accordance with such method as in the opinion of the Commission does clearly and fairly reflect income and the income taxable under this Act. If a taxpayer has no annual accounting period, or has one other than a fiscal year as heretofore defined, the net income and taxable net income shall be computed on the basis of the calendar year. Taxpayers shall

employ the same accounting period on which they report, or would be required to report, their net income under the federal income tax act, except that their right to change accounting periods is limited as hereinafter set forth.

(b) A taxpayer may change his accounting period only with the consent of the Commission. 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 31(b).

(c) The Commission may, whenever in its opinion the fair distribution of income as between taxable years will be promoted thereby, permit, under such regulations as it may prescribe, taxpayers who regularly dispose of property on the installment plan, or who make a casual disposition of property on terms under which the initial payment in cash or property other than the purchaser's evidences of indebtedness does not exceed 40 per cent of the purchase price, to return their income from such transactions over the taxable years during which they occurred.

Sec. 10. What is net income.—The term "net income" shall mean the gross income as defined in Sections 11 and 12, less the deductions allowed by Section 13.

Sec. 11. What is gross income.—The term "gross income" shall include every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services, whatsoever; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any source whatever. Items of gross income includible within said definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by Section 9, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that such amounts were accumulated through deductions from gross income during any taxable year, be treated as gross income for the year in which the transfer occurs, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received.

Sec. 12. Exemptions from gross income.—The following items shall not be included in gross income:

(a) The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or inheritance of a right to receive income shall also be included in gross income.

(b) Amounts received under a life insurance contract payable by reason of the death of the insured, whether in a single sum or in installments; but the interest accruing after December 31, 1932 and paid by the insurer on any such amounts held by it after the death of the insured shall be included in gross income.

(c) Amounts received, other than those specified in subdivision (b), under a life insurance, endowment, or annuity contract; but if such amounts when added to the amounts received under such contract before the taxable year (after deducting from the aggregate of amounts received such proportion thereof as is represented by interest accrued prior to January 1, 1933) exceed the aggregate premiums or consideration paid, whether or not paid during the taxable year, then the excess shall be included in gross income. The amount which a transferee for a valuable consideration of any such contract, or interest therein, shall be permitted to exclude from his gross income shall be the actual value of the consideration paid by him plus the amount of the premiums and other sums subsequently paid by him thereunder.

(d) Amounts received as compensation for personal injuries or sickness by the injured or sick taxpayer, whether received under accident or health insurance contracts, workmen's compensation acts, any plan maintained by employers for such purpose, or by way of damages received in any suit or by agreement; also amounts received as compensation for the death of any member of the taxpayer's family, whether received under insurance contracts, workmen's compensation acts, any plan maintained by employers for such purposes, or by way of damages received in a suit or by agreement; and amounts received under any arrangement entered into by the taxpayer to provide a fund specifically intended to defray the funeral expenses of himself or any member of his family. The words "compensation" and "damages" as used in this subdivision shall include reimbursement for medical, hospital and funeral expenses in connection with such sickness, injury or death.

(e) Amounts received by any person from the United States or the State of Minnesota by way of a pension, family allotment, or other similar allowance.

(f) Interest upon obligations of the State of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities.

(g) Income received from the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law.

(h) The rental value of the premises occupied by the taxpayer as his home, or for his business, except where the occupancy by such taxpayer of such premises for such purposes constitute in whole or in part the consideration received by him in connection with a transaction such that, had such consideration been received thereunder in cash or other property, the amount thereof would have been required, either in whole or in part, to be included in his gross income.

(i) The value of food and goods produced by the taxpayer and consumed or used by his immediate family.

(j) Amounts deducted from the wages or salaries of employees by employers under a voluntary or compulsory plan of unemployment insurance shall not be included in the gross income of such employees.

(k) The amounts distributed by co-operative buying, selling or producing associations, however organized, as patronage dividends shall not be included in the gross income of such associations.

(l) Subdivisions (c), (d), (i) and (j) shall not apply to corporations, and subdivision (g) shall not apply to corporations taxable under Section 2, except so far as taxable under Section 8.

Sec. 13. Deductions from gross income.—The following deductions from gross income shall be allowed in computing net income:

(a) Ordinary and necessary expenses paid or incurred in conducting the activity or in carrying on the trade or business from which the gross income is derived, including a reasonable allowance for salaries and voluntary or compulsory contributions made by employers to maintain a voluntary or compulsory system of unemployment insurance or a system of old age pensions for their employees, and any welfare work for the benefit of such employees.

(b) The interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludible from gross income under Section 12, or on indebtedness incurred or continued in connection with the purchasing or carrying of an annuity.

(c) Taxes paid or accrued within the taxable year, except (a) income or franchise taxes imposed by this Act; and (b) taxes

assessed against local benefits of a kind deemed in law to increase the value of the property assessed; and (c) inheritance and estate taxes. Income taxes permitted to be deducted hereunder shall, regardless of the methods of accounting employed, be deductible only in the taxable year in which paid. 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.

(d) Losses sustained during the taxable year not compensated for by insurance or otherwise if incurred in connection with a business or transaction the gains from which, if any, would be includible in gross income; or if arising from fires not attributable to arson by the taxpayer or some one acting for him, or from storms, wrecks, other casualty, or theft. No deductions shall be allowed under this subdivision for any loss sustained in any sale or other disposition of shares of stock or other securities if within thirty days before or after the date of such sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or disposition; but if such acquisition or the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of such loss shall be disallowed. A loss deductible under this subdivision shall be treated as sustained in the taxable year during which the property in respect of which it has occurred is disposed of by some method of disposition other than gift, devise, bequest or inheritance, but, if it shall clearly appear that it is unlikely that such property can ever be disposed of, then it shall be deemed sustained during the taxable year when it first became reasonably clear that it had become worthless, provided that deductible losses arising from fires, storms, wrecks, or other casualty shall be treated as sustained in the taxable year during which the property was injured or destroyed, and deductible losses arising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. The amount of the deductible loss shall be computed on the same basis as is provided by Section 16 for determining the gain or loss on the sale or other disposition of property.

(e) Debts ascertained to be worthless and charged off during the taxable year, but this last shall be required only if the taxpayer keeps regular books of account; provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided further, that the Commission may allow a bad debt to be deducted or charged off in part.

(f) A reasonable allowance for the exhaustion, wear and tear of property the periodical income from which is includible in gross income, and of property used in an occupation or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiary and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of buildings or other structures or improvements constructed or made on leased premises by a lessee, and the fixtures and machinery therein installed, the lessee alone shall be entitled to the allowance of this deduction.

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

(h) The amount of the deductions under subdivisions (f) and (g) shall be computed on the basis specified in Section 20.

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

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

(k) Payments of the necessary expenses of sickness and accidents to the taxpayer or his dependents during the taxable year shall be allowed as deductions.

Sec. 13-1. **Net loss.**—(a) The term “net loss” as used in this section shall mean the excess of the deductions of the kind provided for in Section 13, permitted to be taken in computing a

taxpayer's taxable net income, as that term is defined in Section 22, over the gross income used in computing such taxable net income, with the following exceptions and limitations:

(1) Deductions otherwise allowable in computing taxable net income, but which are not attributable to the operation of a trade or business regularly carried on by the taxpayer, shall be allowed only to the extent of the amount of the gross income, not derived from such trade or business, included in computing such taxpayer's taxable net income.

(2) There shall be included in computing the gross income used in computing taxable net income the amount of the interest, excludible from gross income under Section 12, that would be treated as assignable to this state, decreased by the amount of interest paid or accrued to purchase or carry the investments earning such interest to the extent that such interest would not have been deductible in computing the taxpayer's taxable net income.

(3) In the case of a taxpayer conducting any trade or business whose taxable net income is determined by an allocation of net income under Section 25 or other provisions of this Act, the net loss shall be computed for any such business in the same manner as if the entire gross income therefrom were assignable to this state, the net loss to be separately computed for each separate business.

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

(5) In computing the net loss for any taxable year, a net loss for a prior year shall not be allowed as a deduction.

(b) If, for any taxable year, it appears upon the production of evidence satisfactory to the Commission that any taxpayer has sustained a net loss, the amount thereof shall be allowed as a deduction in computing the net income of a taxpayer for the succeeding taxable year, and if such net loss is in excess of such net income (computed without such deduction), the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding taxable year; the deduction in all cases to be made under regulations prescribed by the Commission.

(c) The provisions of this Section shall not authorize any taxpayer to deduct a net loss so far as the same is attributable to

activities or operations that should, under recognized accounting principles and practices, be treated as having been incurred prior to January 1, 1933.

(d) Wherever under this Act any taxpayer is required or permitted to make a return for a period of less than 12 months, such period shall be deemed a taxable year in the application of the provisions of this Section.

Sec. 14. Non-deductable items.—In computing the net income no deduction shall in any case be allowed for:

(a) Personal, living or family expenses;

(b) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(c) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(d) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;

(e) 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.

Sec. 15. Inventories shall be taken in certain cases.—Whenever in the opinion of the Commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commission may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business involved and as most clearly reflecting the income.

Sec. 16. Gain and loss on sales.—(a) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in Sections 18 and 19, and the loss shall be the excess of such basis over the amount realized, except that said basis shall in the case of both gain and loss be adjusted as provided in sub-section (b) of this section.

(b) In computing the amount of gain or loss under subsection (a) 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, tear, obsolescence and depletion, which could, during the period of his ownership thereof, have been deducted by the taxpayer under this

Act in respect of such property. In addition, if the property was acquired before January 1, 1933, the basis (if other than the fair market value as of said date) shall be diminished by the amount of exhaustion, wear, tear, obsolescence, or depletion, actually sustained before such date. In the case of stock the basis shall be diminished by the amount of tax-free distributions of capital received by the taxpayer in respect of such stock at any time during his ownership thereof. For the purpose of determining the amount of these adjustments the taxpayer who sells or otherwise disposes of property acquired by gift shall be treated as the owner thereof from the time it was acquired by the last preceding owner who did not acquire it by gift, and the taxpayer who sells or otherwise disposes of property acquired by gift through an inter vivos transfer in trust shall be treated as the owner from the time it was acquired by the grantor. The adjustments in case of a sale or other disposition of property received in a transaction of the kind specified in Section 17 (a), and in the case of a transaction referred to in Section 18 (g), shall include those which the taxpayer should have been required to make were he selling or otherwise disposing of the property exchanged, or sold, in any such transaction.

(c) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(d) The disposition of property by gift, devise, bequest, or inheritance, and the passing of property from a decedent to his estate, shall be treated as dispositions from which neither gain nor loss arises for the purposes of this Act.

Sec. 17. Exceptions—(a) No gain or loss from the following transactions shall be recognized at the time of their occurrence, except as otherwise specified in this section:

(1) If stock of a given class in a corporation is exchanged solely for stock of the same class in the same corporation.

(2) If stock or securities in a corporation a party to a reorganization are, in pursuance of a plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a part to such reorganization.

(3) If, in pursuance of a plan of reorganization, a stockholder in a corporation a party to a reorganization receives, without the surrender by such stockholder of stock or securities of such corporation, solely stock or securities in such corporation or in another corporation a party to the reorganization.

(4) If a corporation a party to a reorganization exchanged property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation party to a reorganization.

(5) If property is transferred to a corporation by one or more persons solely in exchange for its stock or securities, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this section shall apply only if the amount of stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(6) If property (as a result of fire, storm, wreck, or other casualty, or as a result of an exercise of the power of requisition or condemnation or the threat or imminence thereof) is involuntarily or compulsorily converted into property similar or related in service or use to the property converted, or into money which is within one year in good faith, under regulations prescribed by the Commission, expended in the replacement of the property converted or in the acquisition of other property similar or related in service or use thereto, but if any part of the money is not so expended the gain, if any, shall be recognized in an amount not in excess of the money not so expended.

(b) The term "reorganization" shall mean a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of all classes of stock of another corporation, or substantially all the properties of another corporation), or a transfer of all or a part of its assets to another corporation if immediately after the transfer the transferee, or its stockholders, or both, are in control of the corporation to which the assets are transferred, or a recapitalization, or a mere change in identity, form or place of organization, however effected. The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(c) The term "control" means the ownership of at least 80 per centum of all the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

(d) The term "securities" means secured obligations maturing not less than one year after the completion of the reorganization.

Sec. 18. **Basis for determining gain or loss.**—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:

(a) If the property should have been included in the last inventory, it shall be the last inventory value thereof.

(b) 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 such last preceding owner as nearly as the requisite facts can be ascertained by the Commission.

(c) 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.

(d) If the property was acquired by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, it shall be the fair market value at the date of the decedent's death, and for the purpose of this subdivision an inter vivos transfer in trust made by the decedent in which he reserved the income, or the control thereof, to himself for his life and a power of revoking the trust, shall be treated as a disposition by will at his death of the property transferred on such trust terms.

(e) If the property was acquired by a transaction described in Section 17 (a) it shall be the same as it would be if the taxpayer were selling or otherwise disposing of the property exchanged, except that, if it was acquired under the provision of Section 17 (a) (6), the basis shall be the same as if the property so converted were being sold or otherwise disposed of, decreased by the amount of any money received by the taxpayer which was not expended in accordance with the provisions thereof and increased by the amount of any gain to the taxpayer recognized upon such conversion. The provisions of this subdivision shall not apply to transactions included within Section 17 (a) (3) which shall be governed by the next following subdivision.

(f) In the case of transactions within Section 17 (a) (3), the amount that would constitute the basis if the taxpayer were selling or otherwise disposing of the stock in respect of which the distribution was made shall be equitably apportioned between such stock and the stock of securities received by such distribution, and the amount apportioned respectively to the original stock and to the stock or securities received in the distribution shall be the basis respectively on their sale or other disposition.

(g) 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 13 (d) the basis in the case of property so acquired shall be the same as in the case of the stock or securities so sold or disposed of, increased by the excess of the repurchase price of such property over the sale price of such stock or securities, or decreased by the excess of the sale price of such stock or securities over the repurchase price of such property.

(h) If a taxpayer has received a stock dividend in respect of any stock, the amount that would be the loss or gain basis in disposing of the stock in respect of which such stock dividend was received shall be ratably apportioned over such stock and the stock received as a dividend, and the basis thus arrived at for the original and the dividend stock shall be the basis, respectively, when the original stock or dividend stock is sold or otherwise disposed of.

Sec. 19. **Same.**—The basis for determining the gain or loss from the sale or other disposition of property acquired before January 1, 1933, shall be the fair market value thereof on said date except that, if its costs to the taxpayer (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such cost (or last inventory value).

Sec. 20. **Depreciation, etc.**—The basis upon which exhaustion, wear, tear, obsolescence, or depletion are to be allowed in respect of any property shall be the same as provided in Sections 18 and 19 for the purpose of determining the loss or gain on the sale or other disposition thereof.

Sec. 21. **What are dividends.**—(a). The term "dividends" shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, out of its accumulated earnings or profits. Every distribution shall be treated as made out of earnings or profits if, and to the extent that, any such earnings or profits are available on the date the action ordering such distribution was taken or, if no such action was taken, on the date of the actual payment or credit of such distribution to shareholders, and, for the purposes hereof, the earnings or profits for the year during which any such distribution was so made shall be prorated on the time basis. Dividends paid in property other than cash shall be included in the recipient's income at the fair market value of such property on the date the action ordering their distribution was taken, or if no such action was taken, on the date of the actual payment or credit thereof to the shareholder.

(b) If a distribution (other than a distribution in liquidation) is made by a corporation that is not out of earnings or profits, the distributee may receive the same free from tax until the amount thereof equals the loss or gain basis applicable to the stock in respect of which it is received, but amounts received in excess thereof shall be treated as income for the taxable year when received by him; amounts received tax-free hereunder shall be applied to reduce the loss or gain basis applicable to the stock in respect of which received whenever such stock is sold or otherwise disposed of.

(c) A stock dividend shall not be treated as income; but, if a corporation cancels or redeems its stock whether or not such stock was issued as a stock dividend at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend the amount so distributed in cancellation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits.

(d) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under Section 16 but shall be recognized only to the extent provided in Section 17. No amounts received in liquidation shall be taxed as a gain until the distributee shall have received in liquidation an amount in excess of the applicable loss or gain basis of the stock in respect of which the distribution is received, and any such excess shall be taxed as gain in the year in which received, but losses on liquidation shall be recognized only in the year in which the corporation shall have made its final distribution. No amount received in liquidation shall be treated as the distribution of an ordinary dividend.

Sec. 22. **Taxable net income.**—The taxable net income shall mean the net income assignable to this state, and shall be determined as provided in Sections 23, 24, 25, and 26.

Sec. 23. **Gross income to be allocated.**—Items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(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 non-resident 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) 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 whatever 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 and whether in trust or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state; provided, however, that income or gains from such property held in trust shall be assigned to this state if (1) the recipient of such income is domiciled within this state and such income or gains would be taxable to such recipient under Section 28, or (2) the grantor of such trust is domiciled within this state and such income or gains would be taxable to such grantor under Section 29.

(c) 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 subdivision (a).

(d) Income derived from carrying on a trade or business partly within and partly without this state, 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 by the provisions of Section 25. This shall not apply to business income subject to the provisions of subdivision (a).

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

Sec. 24. Computation of net income.—The taxable net income shall, except in so far as Section 25 is applicable, be computed by deducting from the gross income assignable to this state under Section 23 deductions of the kind permitted by Section 13 in accordance with the following provisions:

(a) 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.

(b) 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 25, shall be allowed which the taxpayer's gross income from sources within this state, as determined under subdivisions (a), (b), (c) and (e) of Section 23, bears to his gross income from all sources, including that entering into the computations provided for by Section 25; provided that taxes of the kind deductible under Section 13 (c) shall, so far as within the description of deductions deductible under this subsection (b), be deductible in their entirety if paid to the State of Minnesota or any of its subdivisions authorized to impose such taxes, and shall thereupon be excluded in making the computation of deductions hereinbefore in this subsection (b) provided for.

(c) No deductions shall be allowed under this section, unless the taxpayer, when requested by the Commission, shall furnish it with information sufficient to enable it to determine the validity and correctness of such deductions.

Sec. 25. **Net income to be allocated.**—(a) The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deductions of the kind permitted by Section 13 so far as connected with or allocable against the production or receipt of such income, and assigning to this state a proportion of the remainder determined as follows:

1—If the business consists principally of the sale, or the manufacture and sale, of personal property, that proportion of the remainder which the sales made within this state and through, from or by offices, agencies, branches or stores within this state, bear to the total sales wherever made.

2—In all other cases that proportion of such remainder which the gross earnings or receipts from business operations in whole or part within this state bear to the total gross earnings or receipts from business operations wherever conducted.

3—The sales and earnings or receipts above referred to shall be those for the taxable year whose tax is being computed.

(b) The methods prescribed by Subsection (a) shall apply whenever, and in so far as, the business carried on within this state is an integral part of a business carried on both within and without the state.

(c) Nothing in this section shall prevent the application of Sections 23 and 24 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without the state.

Sec. 26. Taxpayer to determine net income.—The Commission may in any case permit or require a taxpayer to determine the taxable net income from sources within this state by other methods than those heretofore described whenever it shall appear to it that the application of those methods will for any reason not properly reflect the taxable net income assignable to this state, and in that connection may permit or require the direct allocation of such parts of the taxable net income of a business carried on partly within and partly without this state as can be directly allocated with a reasonable degree of accuracy. Every taxpayer feeling aggrieved by the application to his case of the methods heretofore prescribed or required by the Commission may petition the Commission to be allowed to determine the taxable net income allocable to this state on some other basis which shall be allowed if in the opinion of the Commission the method proposed by the taxpayer will more clearly reflect the taxable net income properly assignable to this state, or if it will remove injustices resulting to the taxpayer from the use of those methods. The methods heretofore prescribed or required or permitted to be used by the Commission hereunder, and the results obtained thereunder, shall be presumed to be valid, and the taxpayer shall have the burden of establishing the invalidity of both the method and its results as applied to his case.

Sec. 27. Personal credits on income.—The taxes imposed by this Act shall be on, or measured by, as the case may be, the taxable net income less the following credits against it:

(a) A personal credit in the case of an unmarried individual, the estate of a decedent, and a trust, equal to \$1200.

(b) A personal credit in the case of a married individual, living with husband or wife, and in the case of the head of a household, equal to \$2000. If husband and wife, living together, make separate returns, this credit may be divided between them.

(c) A credit of \$250 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent.

(d) The credits allowed under sub-divisions (a), (b) and (c) shall be determined by the taxpayer's status on the last day of his taxable year.

(e) A credit of \$1000 in the case of each corporation.

(f) An amount for contributions or gifts made within the taxable year.

(1) To the State of Minnesota or any of its political subdivisions for exclusively public purposes.

(2) To any community chest, corporation, organization, trust, fund, or foundation operating within this State, organized and operated exclusively for religious, charitable, 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 shareholder or individual.

(3) To a fraternal society, order, or association, operating under the lodge system, if such contributions or gifts are to be used within this State exclusively for the purposes specified in (2); or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organization, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual.

The total credit against net income hereunder shall not exceed fifteen per cent of the taxpayer's taxable net income.

(g) Dividends received during the taxable year 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 a credit as the amount of the taxable net income of the corporation paying the dividends assignable to this state bears to the entire net income of the corporation, such rate being determined by the returns under this Act of the corporation paying such dividends for the taxable year preceding the distribution thereof except that with respect to dividends distributed during the year 1933 the rate shall be determined by the corporation's return for that year. The burden shall be on the taxpayer of showing that the amount of dividends claimed as a credit has been received from income arising out of business done in this state.

ARTICLE IV.—*Provisions Relating to Special Cases.*

Sec. 28. **Taxes on estates.**—(a) The taxes imposed by subsection (a) of Section 3 of this Act shall apply to the income of estates of decedents; and to the income from any kind of property held in trust, (except trusts coming under the definition of corporations) whether such income is under the trust terms to be

accumulated, currently distributed, or in any other manner disposed of.

(b) The taxable net income of such estate or trust shall be computed in the same manner and on the same basis as in the case of an individual.

(c) There shall be allowed as a credit against the taxable net income of a trust any part of the gross income, without limitations, which, during the taxable year paid, or permanently set aside to be paid, for making contributions or gifts that are within Section 27 (f), or which is during such year used, or permanently set aside to be used, by the trust itself, exclusively for religious, charitable, scientific, literary, artistic or educational purposes, or for the prevention of cruelty to children or animals. This credit shall be in lieu of that provided for by Section 27 (f).

(d) There shall be allowed in computing the taxable net income of an estate or trust for its taxable year as an additional deduction the amount of its income which is during such taxable year to be currently distributed (including that distributed to the guardian of an infant or other incompetent person which is to be held or distributed as the court may direct), or which is during such year lawfully distributed (including that distributed by a fiduciary having a discretion to distribute or accumulate), to the beneficiaries, but if such beneficiaries are domiciled within this state, the amount so allowed as a deduction shall be included in computing the taxable net income of such beneficiaries. If, for any reason, other than the fact that a beneficiary is not domiciled within this state, the amounts thus distributable or distributed shall in any amount not be required to be included in the beneficiaries' income, the deductions aforementioned shall be reduced in the same amount.

(e) There shall be allowed in computing the taxable net income received by the estates of deceased persons during the period of administration or settlement as an additional deduction the amount of the income of the estate for its taxable year which is properly paid or credited during such year to any legatee or heir, but the amounts so allowed as deductions shall be included in computing the taxable net income of the legatee or heir.

(f) If any part of the income of an estate or trust is included in computing the taxable net income of a legatee, heir or beneficiary, he shall be allowed as credits against his taxable net income, in addition to those allowed him under Section 27, his proportionate share of such amounts of dividends as are credits under Section 27 (g) as were included in the income received by him from the estate or trust, and the balance only of such credit shall be allowed the estate or trust.

(g) Income with respect to which an estate or trust has paid the tax imposed by this Act, and income received by an estate of trust prior to January 1, 1933, shall not, when distributed by the fiduciary, be included in the distributee's income.

(h) The provisions of this Section shall not apply to the trusts provided for in Section 29.

Sec. 29. **Taxes on trusts.**—(a) A trust created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his or its employes, to which contributions are made by such employer, or employe, or both, for the purpose of distributing to such employes the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxed, but the amount contributed to such fund by the employer and all earnings of such fund shall be taxed to the distributee, in the year in which distributed or made available to him. The foregoing provisions shall also apply to a trust created by an employer to provide a system of unemployment insurance or a system of old age pensions for his or its employes.

(b) If the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, the power to revest in the grantor title to any part of the corpus of the trust, or the power to give notice the effect of which would be the future revestment in the grantor of the title to any part of the corpus of the trust, or if any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom has such power or powers at any such time as aforesaid, then the income of such part of the trust for such taxable year shall be included in computing the taxable net income of the grantor for such taxable year.

(c) If any part of the income of a trust is, or, in the discretion of the grantor (either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question) or of any person not having an adverse interest in the disposition of such part of the income, may be (1) distributed either to the grantor or in any respect subject to his direction, (2) held or accumulated for future distribution either to the grantor or in any respect subject to his direction, (3) applied to the payment or discharge of any obligation of either the grantor or any other person, (4) applied to provide funds to be used for purposes of either the grantor or any other person if such purposes are such that expenditures therefor, if made directly by the grantor, would be non-deductible under Section 14, or (5) applied to the payment of premiums upon policies on the life of

the grantor (except policies irrevocably payable to organizations gifts to which would be a credit against taxable net income under Section 27 (f) or on the life of any other person if the grantor or any person designated by him is a beneficiary thereunder (with the same exception as above made), then such part of the income of the trust shall be included in computing the taxable net income of the grantor.

Sec. 30. Partnerships not to be taxed.—(a) The tax imposed by this Act shall not be imposed on partnerships; but the distributive share, whether distributed or not, of each partner in the taxable net income of the partnership for its taxable year ending during such partner's taxable year shall be included in computing such partner's taxable net income, except that, if a partnership's taxable year ending in 1933 differs from the partner's taxable year during which he must include its taxable net income for such taxable year in his taxable net income, he shall be required to include only such fraction of the partnership's taxable net income for its said taxable year that the number of months within 1933 contained in its said taxable year bear to twelve.

(b) The taxable net income of the partnership shall be assigned to this state under Sections 23 to 26 inclusive.

(c) Each partner shall be allowed as a credit against his taxable net income his proportionate part of the dividend credit allowable under Section 27 (g), and of contributions or gifts that are within Section 27 (f) made by the partnership during its taxable year, but the sum of this latter credit allowed hereunder and that allowed the partner under Section 27 (f) shall not exceed the limit therein specified.

(d) The taxable net income of a partnership which a partner is required hereunder to take into his taxable net income shall be taxed at the rates applicable to the partner's taxable year during which he is required to include it in his taxable net income.

Sec. 31. Taxes for part of year.—(a) Whenever under this Act a taxpayer is permitted or required to make a return for a fractional part of a year, the tax shall be computed in the same manner as if such fractional part of a year were an entire year. This shall not apply to cases within subdivision (b) of this section.

(b) Whenever a taxpayer is permitted to change the basis for reporting his income from a fiscal to a calendar year, he shall make a separate return for the period between the close of his last fiscal year and the following December 31; if the change is from a calendar to a fiscal year, a separate return shall be made for the

period between the close of his last calendar year and the date designated as the close of the fiscal year; and if the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. The taxable net income for any such period shall be put on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which such separate return is made; and the tax shall be that part of a tax, computed on the taxable net income put on such annual basis, less the credit against that taxable net income under the provisions of Section 27, which the number of months in such period bears to twelve months.

Sec. 32. Special taxes for corporation.—(a) If a corporation is formed or availed of for the purpose of splitting up the income of its stockholders, or of the holders of a majority of its shares, with an aim to reducing the total amount of their taxes under this Act, there shall be imposed upon it a special tax, in addition to those otherwise imposed by this Act, of ten per cent of its taxable net income assignable to this state less credits against net income under Section 27.

(b) When any corporation liable to taxation under this Act conducts its business in such a manner as either directly or indirectly to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodities or services in which it deals at less than the fair price which might be obtained therefor, or buying such commodities or services at more than the fair price for which they might have been obtained, or when any corporation, a substantial portion of whose shares is owned, directly or indirectly, by another corporation, deals in the commodities or services of the latter corporation in such a manner as to create a loss or improper net income or to reduce the taxable net income attributable to this state, the Commission may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income or the overstatement of its losses, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business.

(c) Whenever 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 Tax Commission may permit or require such

consolidated statements as in its opinion are necessary in order to determine the taxable net income received by any one of the affiliated or related corporations. If 90% of all the voting stock of two or more corporations is owned by or under the legally enforceable control of the same interests the Commission may impose the tax as though the combined entire taxable net income was that of one corporation except that the credit provided by Section 27 (c) shall be allowed for each corporation; but inter-company dividends shall in that event be excluded in computing taxable net income.

ARTICLE V.—Returns.

Sec. 33. **Who shall make returns.**—The following persons shall make a return under oath for each taxable year (or fractional part thereof where permitted or required by this Act) if their net income or taxable net income for such period, or that of the persons for whom they are required to make the return, exceeds the credits against taxable net income allowable under Section 27, or if their gross income for such period, or that of the person for whom they are required to make the return, exceeds \$5000:

(a) Individuals with respect to their own taxable net income.

(b) The executor or administrator of the estate of a decedent with respect to the taxable net income of such decedent for that part of the taxable year during which he was alive.

(c) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate.

(d) The trustee or other fiduciary or property held in trust with respect to the taxable net income of such trust if such trust belongs to the class of taxable persons.

(e) The guardian of an infant or other incompetent person with respect to the taxable net income of such infant or other incompetent person.

(f) Every corporation with respect to its taxable net income, and in this case the return shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer.

(g) The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer.

Sec. 34. **Married women may make separate returns.**—A married woman living with her husband may file a separate return of her own income, or she may include the income received by her

during any year during any part of which she lived with her husband, in the return of her husband. In the latter case the tax shall be computed on the basis of the combined taxable net income and there shall be allowed as a credit against such taxable net income, gifts or contributions within Section 27 made by the husband or by her while living with him, subject to the limit therein contained. A woman who was married during only a part of a year shall, if during any part of such year she lived with her husband, treat all her income for such year in accordance with one of the methods herein referred to.

Sec. 35. Form of return.—Every return shall specifically set forth the items of gross income, deductions, credits against net income, and any other data necessary for computing the amount of any item required for determining the amount of the tax. The return shall be in such form as the Commission may prescribe as necessary to determine the amount of the tax.

Sec. 36. Filing of return.—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.

Sec. 37. Shall be annual return—exceptions.—The returns shall cover a twelve month period except in the following cases:

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

(b) A taxpayer who changes from one taxable year to another shall make a return from the fractional parts of a year as specified in Section 31 (b).

Sec. 38. Partnership returns.—(a) Partnerships shall make a return for each taxable year which shall conform in every respect to the requirements of Section 35, and shall, in addition, include the names and addresses of all partners entitled to a distributive share in their taxable net income and the amount of such distributive share to which each is entitled. The return shall be sworn to by one of the partners.

(b) Any person or corporation making payments to others on account of wages, salaries, commissions, rent, interest or dividends, may be required by the Commission, as a condition upon his right to take the deductions allowed by this Act in computing his net income, to file returns as to such payments made during a taxable year showing the names and addresses of those to whom such pay-

ments were made, and the amounts thus paid to each of them. The Commission may also require brokers to furnish it with the names of the customers for whom they have transacted business, and with such details as to transactions of any customer as will enable it to determine whether all income tax due on profits or gains of such customers' has been paid.

Sec. 39. Date of filing.—The returns required to be made under Sections 33, 34, 35, 36, and 38 (other than those under 38 (b) which shall be made within 30 days after demand therefor by the Commission) shall be filed at the following times:

(a) Returns made on the basis of the calendar year shall be filed on the 15th day of March following the close of the calendar year.

(b) Returns made on the basis of the fiscal year shall be filed on the 15th day of the third month following the close of such fiscal year.

(c) Returns made for a fractional part of a year as an incident to a change from one taxable year to another shall be filed on the 15th day of the third month following the close of the period for which made.

(d) Other returns for a fractional part of a year shall be filed on the 15th day of the third month following the end of the month in which falls the last day of the period for which the return is made.

(e) In case of sickness, absence or other disability or whenever, in its judgment, good cause exists, the Commission may extend the time for filing these returns for not more than six months, except that where the failure is due to absence outside the United States it may extend the period until 30 days after the taxpayers' return to this State.

Sec. 40. Where filed.—The returns required to be made under Sections 33, 34, 35, 36 and 38 shall be filed with the Commission at its office in St. Paul or at such local offices in the County of the residence or principal place of business of the taxpayer as the Commission may designate. If designated by the Commission the County Treasurer of each county shall receive such return and payments of taxes thereon and transmit the same to the Commission within 10 days, and in such case his bond as County Treasurer shall cover any defalcations in connection therewith. But no County Treasurer shall be required to assist in making out or swearing to such returns.

ARTICLE VI.—*Collection of Tax.*

Sec. 41. **Payment of tax—exceptions.**—The taxes imposed by this Act, and interest and penalties imposed with respect thereto, shall be paid by the taxpayer upon whom imposed except in the following cases:

(a) The tax due from a decedent for that part of the taxable year in which he died during which he was alive shall be paid by his executor or administrator.

(b) 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.

(c) The tax due from the estate of a decedent shall be paid by the executor or administrator thereof.

(d) The tax due from a trust (including those within the definition of corporation) shall be paid by the trustee or trustees.

(e) 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.

Sec. 42. **Tax to be paid when return is filed.**—All taxes imposed by this Act shall be paid at the time fixed for filing the return on which the tax is based, except that they may, at the election of the taxpayer, be paid in two equal installments the first of which shall be paid at the time above specified and the second on or before six months thereafter. They shall be paid to the Commission or to the local officers designated by the Commission with whom the return is filed as hereinbefore provided.

Sec. 43. **Tax commission to examine return.**—(a) The Commission 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 it may deem necessary for determining the correctness of the return. The tax computed by it 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 Commission shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the Commission within 30 days after notice of the amount and demand for its payment shall have been mailed to the taxpayer by the Commission. If

the understatement of the tax on the return was false or 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 Commission within 30 days after notice of the amount thereof and demand for payment shall have been mailed to the taxpayer by the Commission. If the amount of the tax found due by the Commission 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 47 (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.

(b) The notices and demands provided for by Sections 43, 44, and 45 shall contain a brief statement of the computation of the tax and shall be sent by registered mail to the taxpayer at the address given in his return, if any, and if no such address is given then to his last known address.

Sec. 44. Failure to make return or pay tax.—If any person or corporation required by this Act to file any return shall fail to do so within the time prescribed by this Act or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Commission file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within said time to file such return, or corrected return, the Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, which tax, (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 10 days after the Commission has mailed to such taxpayer a written notice of the amount thereof and demand for its payment.

Sec. 45. Actions for collection of tax.—(a) If a tax imposed by this Act, including penalties therein, or any portion of such tax, is not paid within 30 days after it is required to be paid thereunder, the Commission shall, unless it proceeds under the provisions of subdivision (b) hereof, bring against the person liable for payment thereof an action at law in the name of the state for the recovery of the tax and interest and penalties due in respect thereof under this Act. Such action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the taxpayer or, in the

case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by the taxpayer shall be conclusive against the taxpayer in this matter. If no such place is named in the return such action may be commenced in Ramsey County. Such action shall be commenced by filing with the clerk of such court a statement showing the name and address of the taxpayer, if known, an itemized summary of the taxable net income on the basis of which the tax has been computed, the tax due and unpaid thereon and the interest and penalties due with respect thereto under the provisions of this Act, and shall contain a prayer that the court adjudge the taxpayer to be indebted on account of such taxes, interest and penalties in the amount thereof specified in the statement; a copy of such statement shall be furnished to the clerk therewith. Said clerk shall mail a copy of said statement by registered mail to the taxpayer at the address given in the return, if any, and if no such address is given then at his last known address within 5 days after the same is filed, except that, if the taxpayer's address is not known, notice to him shall be made by posting copy of said statement for ten days in the place in the court house where public notices are regularly posted. The taxpayer shall, if he desires to litigate the claim or any part thereof, file a verified answer with said clerk setting forth his objections to the claim or any part thereof; said answer shall be filed on or before the lapse of the twentieth day after the date of mailing said statement or, if notice has been given by posting, on or before the twentieth day after the expiration of the period during which the notice was required to be posted. If no answer is filed within the specified time, the court shall enter judgment for the State in the amount prayed for plus costs of \$10.00. If an answer is filed, the issues raised shall stand for trial as soon as possible after the filing of such answer and the court shall determine the issues and direct judgment accordingly, and if the taxes, interest or penalties are sustained to any extent over the amount tendered by the taxpayer, shall assess \$10 costs against the taxpayer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The Commission may call upon the county attorney or the attorney general to conduct such proceedings on behalf of the state. Execution shall be issued upon such judgment at the request of the Commission, and such execution shall in all other respects be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon such execution.

(b) If a tax imposed by this Act, or any portion of such tax, is not paid within 30 days after it is required to be paid thereunder, and if, for want of power in the State of Minnesota to impose a

personal liability for such tax, interest or penalties upon the taxpayer or to obtain jurisdiction of his person for purposes of rendering against him a personal judgment for the amount of any such tax, interest or penalties, or for any other reason the proceedings authorized by subdivision (a) hereof shall be impossible, then the Commission shall issue its warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the Commission and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, except the homestead and household goods of the taxpayer, and shall sell so much thereof as is required to satisfy such taxes, interest and penalties, and his costs, but such sales shall as to their manner be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales less the sheriff's costs shall be turned over to the Commission which shall retain such part thereof as is required to satisfy the tax, interest and penalties, and costs, and pay over any balance to the taxpayer. The Commission shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer at his last known address a written notice of the amount of taxes, interest and penalties due from the taxpayer and demand for their payment.

(c) The Commission may also proceed under the provisions of subdivision (b) hereof whenever it has reasonable grounds for believing that the collection of any taxes, interest or penalties due under this Act will be jeopardized by delays incident to other methods of collection, and in such cases no preliminary notice and demand shall be required.

(d) If the Commission has reasonable grounds for believing that a taxpayer is about to remove himself or his property from this state with the purpose of evading the tax imposed by this Act, it may immediately declare the taxpayer's taxable year at an end and assess a tax on the basis of its own knowledge or information available to it, mail the taxpayer written notice of the amount thereof at his last known address, demand its immediate payment, and, if payment is not immediately made, collect the tax by the method prescribed in subdivision (b) hereof, except that it need not await the expiration of the periods of time therein specified.

(e) In addition to all other methods authorized for the collection of the tax it may be collected in an ordinary action at law or in equity by the state against the taxpayer.

(f) Either party to an action for the recovery of any taxes, interest, or penalties under subdivisions (a) or (e) hereof may remove the judgment to the Supreme Court by appeal as provided for appeals in civil cases.

(g) No suit shall lie to enjoin the assessment or collection of any taxes imposed by this Act, or the interest and penalties imposed thereby.

(h) The tax, as assessed by the Commission, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its *incorrectness or invalidity*. The statement filed by the Commission with the clerk of court, as provided herein, or any other certificate by the Commission of the amount of the tax and penalties as determined or assessed by it, shall be admissible in evidence and shall establish *prima facie*, the facts set forth therein.

Sec. 46. Assessment of tax.—(a) The amount of the taxes imposed by this Act shall be assessed within two years after the return was filed. They shall be deemed to have been assessed whenever the commission shall have determined and certified the amount thereof. No proceeding for their collection shall be begun after the expiration of two years after such date unless the commission shall, prior to the expiration thereof, have mailed the taxpayer at his last known address written notice of the amount thereof and demand for payment of such amount, and in that case no proceeding for their collection shall be begun after one year after the mailing of such notice. The provisions of this section shall not apply in the case of a failure to file a return, nor in the case of a false or fraudulent return with intent to evade the tax. In such cases the Commission may assess the tax, or begin proceedings for its collection, at any time.

(b) If before the expiration of the time prescribed by subdivision (a) hereof for the assessment of the tax the Commission and the taxpayer consent in writing to the assessment of the tax after such time, it may be assessed at any time prior to the expiration of the period agreed upon (or extensions thereof agreed upon before the expiration of the preceding extension), and be collected at any time within one year after the date of its assessment.

Sec. 47. Refundment of over-payments.—(a) A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected, (other than by the methods provided for in subdivisions (a) and (e) of Section 45) an amount of tax for any year in excess of the amount legally due for that year, may file with the Commission a claim for the refund of such excess. No such

claim shall be entertained unless filed within two years after such tax was paid or collected. If the Commission finds that the taxpayer has paid more than was legally payable, it shall issue its certificate for the refundment of the excess with interest at the rate of 6 per centum per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this Act, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

(b) A taxpayer aggrieved by the decision of the Commission on his claim for a refund may sue the Commission to recover any overpayments of taxes made by him and not refunded by it. Such suits may be brought in the district court of the district in which lies the county of his residence or principal place of business or, if an estate or trust, of the principal place of its administration, or in the district court for Ramsey County. Such suit shall be brought within six months after the Commission shall have taken final action on such claim for refund except as provided in subdivision (c) hereof.

(c) No suit shall be entertained to recover overpayments of taxes imposed by this Act until the taxpayer shall have filed a claim for refund thereof with the Commission and until said Commission has finally disposed thereof, except that, if said Commission shall fail to render final action on a claim for refund within 6 months after it is filed with it, the taxpayer may sue the Commission for such overpayment at any time thereafter but not more than 2 years after the filing of the claim for refund. On the bringing of such suit the Commission shall be deprived of further jurisdiction in hearing and determining such claim for refund.

(d) Either party to the suits provided for in subdivisions (b) and (c) hereof may remove the judgment to the supreme court by appeal as provided for appeals in civil cases.

Sec. 48. **Tax a personal debt.**—(a) The tax imposed by this Act, and interest and penalties imposed with respect thereto, shall become a personal debt of the taxpayer from the time the liability therefor arises, irrespective of when the time for discharging such liability by payment occurs. The debt shall, in the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, be that of such person in his official or fiduciary capacity only unless he shall have voluntarily distributed the assets held in such capacity without reserving sufficient assets to pay such tax, interest and penalties, in which event he shall be personally liable for any deficiency. This provision shall apply only

to cases in which this state is legally competent to impose such personal liability.

(b) The tax imposed by this Act, and interest and penalties imposed with respect thereto, shall become a lien upon all of the real property of the taxpayer within this state, except his homestead, from and after the filing by the Commission of a notice of such lien in the office of the register of deeds of the county in which such real property is situate.

ARTICLE VII.—*Interest and Penalties.*

Sec. 49. **Penalties for non-payment.**—(a) If any person, failing to make any return required to be made by him under the provisions of this Act at the time therein specified for such return, shall fail to make such return within 30 days after the Commission has mailed him a written notice and demand therefor, there shall be imposed on him a specific penalty of \$10, except that to such penalty shall be added the penalty imposed by sub-section (c) if the failure to make the return on such demand is with the purpose of evading the tax.

(b) If any person, failing to pay any tax due under this Act at the time required thereby for such payment, shall fail to pay such tax within 30 days after the Commission has mailed him written notice of the amount thereof and demand for its payment, there shall be imposed on him a specific penalty of \$10, except that to such penalty shall be added the penalty imposed by sub-section (c) if the failure to pay on such demand is with the purpose of evading the tax.

(c) If any person, with intent to evade the tax imposed by this Act, shall fail to file any return required by this Act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to 25 per centum of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related.

(d) The penalties imposed by this section may be collected as part of the tax or by separate actions brought by the Commission for their recovery in any district court in which actions for the collection of taxes due from such taxpayer can be begun under the provisions of Section 45 (a).

(e) The Commission shall have power to abate penalties when in its opinion their enforcement would be unjust or inequitable.

(f) If any tax imposed by this Act, or any portion of such tax, is not paid when first due and payable thereunder, there shall be added thereto interest at the rate of six per centum per annum from the time above specified, except that, where the taxpayer has filed a return, other than a false or fraudulent one made with intent to evade the tax, and paid the tax on the basis thereof, interest on additional taxes thereafter imposed for the same taxable year (or fraction thereof, if the return was for a fractional year) shall commence to run only from the thirtieth day after the Commission has mailed the taxpayer written notice either requiring him to make a corrected return or informing him that an additional tax is due and demanding the payment thereof. Interest due hereunder shall be added to the tax and collected as part thereof.

(g) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

ARTICLE VIII.—*Administrative Provisions.*

Sec. 50. **Tax commission to administer act.**—The Commission shall administer and enforce the assessment and collection of the taxes imposed by this Act. It may, from time to time, make and publish such rules and regulations, not inconsistent with this Act, as it may deem necessary to assist in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this Act, and shall distribute the same throughout this State and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this Act.

Sec. 51. **Commission may examine books and records.**—For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid taxes hereunder, the Commission shall have power to examine or cause to be examined any books, papers, records, or memoranda relevant to making such determinations including the taxpayer's retained copy of his return of income to the United States Government for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the taxpayer or any other person or corporation. It shall further have power to require the attendance of any taxpayer or other person having knowledge or information in the premises to compel the production of books, papers, record or memoranda by persons so required to attend, to take testimony on matters material to such determination and to administer oaths or affirmations.

Sec. 52. **Examiners.**—For the purpose of making such examinations and determinations, the Commission may appoint such

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

Sec. 53. Powers of examiners.—Such income tax examiners, whether appointed by the Commission or the comptroller, shall have all the rights and powers with reference to the examining of books, records, papers, or memoranda, and with reference to the subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony that are conferred upon the Commission hereby. The clerk of any court of record, or any justice of the peace, upon demand of any such examiner shall issue a subpoena for the attendance of any witness or the production of any books, papers, records or memoranda before such examiner. The Commission may also issue subpoenas for the appearance of witnesses before it or before such examiners. The Commission may appoint such referees as it deems necessary to review (singly or as a board of review) the reports of the income tax examiners and petitions or complaints of taxpayers and report thereon to the Commission. Disobedience of subpoenas issued under this Act shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court.

Sec. 54. Additional help.—The Commission (and the comptroller, if requested to conduct examinations as hereinbefore provided) may appoint and employ such additional help, or purchase such supplies or materials or incur such other expenditures in the enforcement of this Act as it may deem necessary. The salaries of all officers and employes provided for in this Act shall be fixed by the Commission, where appointed by it, and by the comptroller, where appointed by him, subject to the approval of the Department of Administration and Finance.

Sec. 55. Payment of expenses.—All the expenses of the administration of this Act shall be paid out of the receipts therefrom as other moneys of the state are expended by the departments incurring the same, and there is hereby appropriated out of such receipts so much thereof as may be necessary therefor. Provided that none of said departments may expend any money for any of the purposes of this Act after February 15, 1935, unless the same shall be appropriated by the Legislature.

Sec. 56. Reports shall not be public record.—(a) Except in connection with a proceeding involving taxes due under this Act from the taxpayer making such return, in accordance with proper

judicial order, or as otherwise provided by law, it shall be unlawful for the Commission or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this Act, or any information concerning the taxpayer's affairs acquired while examining or auditing any taxpayer's liability for taxes imposed thereunder. Nothing herein shall be construed to prohibit the publication by the Commission of statistics so classified as not to disclose the identity of particular reports or returns and the items thereof, or the inspection of any return by the legal representative of this state in connection with any proceeding involving the taxes due from the taxpayer making such return and the use thereof in such proceedings. The Commission may also permit the authorized representatives of the United States or any state imposing an income tax to examine the returns of any taxpayer, or furnish them with copies or abstracts thereof or with information relating to such returns, if the United States or such other state grants substantially similar privileges to representatives of this state connected with the administration of the tax imposed by this Act.

(b) Any person violating the provisions of subdivision (a) hereof shall be guilty of a gross misdemeanor.

ARTICLE IX.—*Distribution of Proceeds of Taxes.*

Sec. 57. **Distribution of taxes.**—The revenues derived from the taxes, interest and penalties under this Act shall be paid into the state treasury; and, unless the sums required during any year for the expenses of collecting such tax and for refunds of taxes erroneously collected from taxpayers, shall be paid into a special fund in the State Treasury to be known as "Income Tax School Fund" and the same shall be distributed to all the school districts in the State of Minnesota, including municipalities which operate their own schools, on the basis of population therein of compulsory school age. Such distribution shall be made by the State Board of Education semi-annually in the same manner as now provided by law as nearly as practicable governing the distribution of state funds by said State Board of Education, except that each such school district shall be entitled to receive its proportion of said Fund without being subject to any conditions. Provided, however, that the amounts distributed to each school district shall be used only for the purpose of

(1) Payment or providing for the payment of any bonded or other indebtedness of such district outstanding January 1, 1933.

(2) Providing for the payment of any bonded or other indebtedness thereafter incurred until such debts are fully paid or payment thereof provided for.

(3) Any such revenue not required to pay or provide for the payment of any such indebtedness shall be used to cover and pay current operating expenses and to reduce and replace levies on real and personal property.

ARTICLE X.

Sec. 58. **Provisions separable.**—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other type of case within their terms. If any provision hereof excepting any item of income from inclusion in the computation of the taxes imposed hereby, or allowing any credit or deduction in calculating such taxes, be adjudged to be invalid by any court of competent jurisdiction, the taxes shall be computed or calculated as if such item of income were not excepted or such credit or deductions not allowed. If the exception or exemption of any person or corporation from any tax imposed hereby be adjudged by any court of competent jurisdiction to be invalid, such persons or corporations shall be subject to the tax imposed on other persons or corporations of the same class hereunder.

Approved April 21, 1933.

CHAPTER 406—H. F. No. 559

An act providing aid to certain school districts and appropriating money therefor.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Special aid for certain school districts.**—The state shall pay to each school district wherein any lands were exempt from taxation during the years 1931 and 1932, or during any one or more of said years, by reason of the title thereto having been acquired by the state in the operation of the rural credits system,