

transaction and this authority of the state auditor to transfer shall include all sums not transferred prior to the passage of this act.

The moneys necessary to provide for contributions to the retirement fund by the various units of the state government which are wholly or substantially financially self-sustaining by reason of income or revenue derived from their own activities are hereby appropriated for such purpose out of any funds derived by such units of government as income or revenue from their own activities.

If an employee has worked in departments other than the one in which he was last employed, that portion of the annuity herein provided to be paid by the department shall be paid by the department where he was last employed.

All such salary deductions and the contributions herein provided by the state shall be credited to a fund to be known as the retirement fund and all interest and other income of the association shall be credited to this fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of the association and the annuities herein provided upon retirement shall be paid only from such fund. Under the direction of the retirement board the head of each department shall furnish such information and keep such records as the board may require for the discharge of its duties.

The state auditor is hereby authorized and directed to cause to be levied for the year 1945 and each year thereafter upon all taxable property in the state, in the manner in which other taxes are levied, three-tenths of one mill. The proceeds of such tax levy are hereby appropriated to the state employees retirement fund.

Sec. 2. This act shall take effect July 1, 1945.

Approved April 23, 1945.

CHAPTER 604—H. F. No. 1220

An act relating to taxes on and measured by net income and amending Minnesota Statutes 1941, Section 290.01, Subdivision 3; Section 290.01, Subdivision 20; Section 290.06, Subdivision 3, as amended by Laws 1943, Chapter 656, Section 2; Section 290.07, Subdivision 4; Section 290.07, Subdivision 5;

Section 290.08, as amended by Laws 1943, Chapter 656, Section 21, Subdivision 1 and Section 5; Section 290.09, as amended by Laws 1943, Chapter 656, Sections 6, 7, 8, 24 and 25; Section 290.12, Subdivision 2; Section 290.18; Section 290.19; Section 290.37, as amended by Laws 1943, Chapter 656, Section 14; Section 290.49, as amended by Laws 1943, Chapter 656, Section 15; Section 290.26; Section 290.01, Subdivision 21, as amended by Laws 1943, Chapter 656, Section 11; Section 290.53, as amended by Laws 1943, Chapter 656, Section 17; Section 290.50, as amended by Laws 1943, Chapter 656, Section 16; Section 290.361; Section 290.23, as amended by Laws 1943, Chapter 656, Section 12; Section 290.31; Laws 1943, Chapter 107; repealing Laws 1943, Chapter 656, Section 20; and adding new provisions; for an act relating to the Board of Tax Appeals and amending Minnesota Statutes 1941, Section 271.08; Section 271.12; Section 271.06, Subdivisions 2 and 6.

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

Section 1. Minnesota Statutes 1941, Section 290.01, Subdivision 3, is hereby amended to read as follows:

290.01.

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

Sec. 2. Minnesota Statutes 1941, Section 290.01, Subdivision 20, is hereby amended to read as follows:

290.01.

Subd. 20. **Gross income.** The term "gross income" includes every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any source. Items of gross income includible within these 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 290.07, 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 or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, *but only to the extent that such amounts resulted in a reduction of the tax imposed by this act*, 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. 3. Minnesota Statutes 1941, Section 290.06, Subdivision 3, as amended by Laws 1943, Chapter 656, Section 2, is hereby amended to read as follows:

290.06.

Subd. 3. Credits. The taxes due under the foregoing computation shall be credited with the following amounts:

1. In the case of an unmarried individual, and, except as provided in paragraph 6, in the case of the estate of a decedent, \$10.00, and in the case of a trust, \$5.00.

2. In the case of a married individual, living with husband or wife, and in the case of a head of a household, \$30.00. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them.

3. In the case of an individual, \$10.00 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. *In the case of the head of the household, a credit for one dependent shall be disallowed. The dependent credit allowed a parent in respect of a child coming within the provisions of Section 13 of this act, shall be reduced in the amount of \$1.00 for each \$100 earned by such child, and for this purpose a fractional part of \$100 shall be disregarded, unless more than \$50, in which case it shall be considered \$100.* A payment to a divorced or separated wife which is includible under this act in the gross income of such wife, shall not be considered a payment by the husband for the support of any dependents. A husband who makes periodic payments to a divorced, separated or remarried wife, who is not a resident of this state shall be entitled to the same personal credit as provided in the preceding paragraph 2.

4. In the case of a corporation, an amount computed by applying to the tax a fraction equal to one-tenth of the average of the following ratios:

(a) The ratio of the fair value of tangible property, real, personal and mixed, owned or used by the taxpayer in this state in connection with his trade or business during the taxable year to the total fair value of such property of the taxpayer owned or used by him in connection with the trade or business everywhere. Cash on hand or in bank, shares of stocks, notes, bonds, accounts receivable or other evidence of indebtedness, special privileges, franchises, good will or property the income of which is not taxable or is separately allocable, shall not be considered tangible property nor included in the apportionment.

(b) The ratio of the total wages and salaries paid or incurred during the taxable year in this state to the total wages and salaries paid or incurred during the taxable year everywhere.

5. In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under this act is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by Extra Session Laws 1933, Chapter 53, as amended.

6. If the status of a taxpayer, insofar as it affects the credits allowed under paragraphs 1, 2 and 3 of this *subdivision* shall change during the taxable year, or if the taxpayer shall either become or cease to be a resident of the state during such taxable year, such credit shall be apportioned, in accordance with the number of months before and after such change. For the purpose of such apportionment, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month. In case of death during a taxable year a credit shall be allowed to the decedent, in proportion to the number of months before his death, and to his estate, in proportion to the number of months after his death, and in any event a minimum credit of \$5.00 shall be allowed to the decedent and his estate, respectively.

7. In the case of a nonresident individual, credits under paragraphs 1, 2 and 3 of this *subdivision* shall be apportioned in the proportion of the gross income from sources in Minnesota to the gross income from all sources, and in any event a minimum credit of \$5.00 shall be allowed.

Sec. 4. Minnesota Statutes 1941, Section 290.07, Subdivision 4, is hereby amended as follows:

290.07.

Subd. 4. What items included in gross income. The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision 1, and such amounts are to be properly accounted for as of a different period. *In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under Section 290.31) accrued only by reason of the death of the taxpayer, shall not be included in computing net income for the period in which falls the date of the taxpayer's death.*

Sec. 5. Minnesota Statutes 1941, Section 290.07, Subdivision 5, is hereby amended as follows:

290.07.

Subd. 5. Deductions and credits, when taken. The deductions and credits provided for in this chapter shall be taken for a taxable year in which "paid or accrued" or "paid and incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. *In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under Section 290.31) accrued as deductions and credits only by reason of the death of the taxpayer shall not be allowed in computing net income for the period in which falls the date of the taxpayer's death.*

Sec. 6. Laws 1943, Chapter 656, Section 26, is hereby amended to read as follows:

290.075. Renegotiated contracts adjusted. Any taxpayer who supplies any goods, wares and merchandise or performs services, or both, under any contract, with the United States of America, or under any subcontract thereunder, or under a cost-plus-a-fixed-fee contract with the United States of America, or any agency thereof and who is subject to renegotiations under the renegotiation laws of the United States of America, or is required to renegotiate with his subcontractor, shall be required to adjust his or its Minnesota income and franchise tax liability in accordance with the following rules:

A return shall be filed, and the income and franchise tax computed, on the basis of the Minnesota taxable net income without giving effect to any renegotiations occurring after the close of the taxable year. If after the close of the taxable year there is a final determination under renegotiation, and if the net income of the taxpayer for the year in which the determination is made, computed without regard to said renegotiation, is less than the difference between (1) the amount determined by the renegotiation to be (a) excess profits, (b) excess fees under a fixed fee contract with the United States, or any agency thereof, or (c) the amount of any item for which the taxpayer has been reimbursed but which is disallowed as an item of cost chargeable to a fixed fee contract, and (2) the amount of federal income and excess profits taxes applicable thereto, then the taxpayer shall be entitled to a refund of the state income tax which it has paid on the excess of said difference over the amount of its net income for the year in which the determination under renegotiation is made. This section shall apply to all taxable years ending after December 31, 1941, notwithstanding the expiration of the period of limitation provided by law, provided, however, that no refund shall be allowed unless a claim therefor is filed as provided by law within *two years after the return was filed or two years after the tax was paid or collected, whichever period is the longer*. The certificate of the agency or instrumentality of the United States conducting such renegotiation proceedings shall be evidence of the amount of the renegotiated profit and of the date thereof. In no event shall a refund under the provisions of this section exceed ten per cent of the state income and franchise tax paid on the taxable net income computed without giving effect to the renegotiation, as provided by this section.

Sec. 7. Minnesota Statutes 1941, Section 290.09, as amended by Laws 1943, Chapter 656, Sections 6, 7, 8, 24 and 25, are hereby amended as follows:

290.09. **Deduction from gross income.** The following deductions from gross income shall be allowed in computing net income:

(1) Ordinary and necessary expenses paid or incurred in conducting the activity or in carrying on the trade, profession, gainful occupation 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 unem-

ployment insurance or a system of old age pensions for their employees, and any welfare work for the benefit of such employees;

(2) 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 excludable from gross income under Section 290.08, or on indebtedness incurred or continued in connection with the purchasing or carrying of an annuity;

(3) 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, gift 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.

(4) 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. Losses from wagering transactions shall be allowed only to the extent of the gain from such transactions. No deductions shall be allowed under this clause for any loss sustained in any sale or other disposition of shares of stock or other securities if within 30 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. *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 pro-

vided by section 290.12 for determining the gain or loss on the sale or other disposition of property;

(5) Debts which become worthless during the taxable year, provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided further, that the commissioner may allow a bad debt to be deducted or charged off in part;

(6) 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;

(7) 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 commissioner. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each;

(8) The amount of the deduction under clauses (6) and (7) shall be computed on the basis specified in Section 290.16;

(9) 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;

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

(11) Payments for expenses for hospital, nursing, medical, surgical, dental and other healing services and for drugs and medical supplies incurred by the taxpayer on account of sickness or personal injury to himself or his dependents. Hotel and traveling expenses shall not be deductible under the provisions of the subdivision;

(12) An allowance for amortization of war facilities to the extent that such deduction is finally allowed under Section 124 of the internal revenue code provided no deduction has been claimed with respect thereto under clause (6) of this section or any other section, subdivision, or clause of this chapter;

(13) In the case of a corporation, the amount of any income of the taxpayer attributable to the discharge, within the taxable year, of any indebtedness of the taxpayer, or for which the taxpayer is liable evidenced by a security (as hereinafter in this paragraph defined) if the taxpayer makes and files at the time of filing the return, in such manner as the Commissioner by regulations prescribes, its consent to the regulations prescribed under Section (16) (c) then in effect. In such cases the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. As used in this paragraph the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness issued by any corporation.

(14) . An allowance for all taxable years beginning after December 31, 1942, for amortization of bond premiums in accordance with the provisions of Section 125 of the Internal Revenue Code adapted to the provisions of this Act under regulations issued by the Commissioner, but only to the extent that such deduction has not been allowed under any other section of this Act.

Sec. 8. Minnesota Statutes 1941, Section 290.08, as amended by Laws 1943, Chapter 656, Section 21, Subdivision 1, and Section 5, is hereby amended to read as follows:

290.08. **Exemptions from gross income.** The following items shall not be included in gross income:

(1) The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or inheritance of a right to receive income shall also be included in gross income. Amounts paid, credited, or to be distributed at intervals, under the terms of the gift, bequest, devise or inheritance, shall be included in gross income of the recipient to the extent paid, credited, or to be distributed out of income;

(2) 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;

(3) Amounts received, other than those specified in clause (2), and other than amounts received as annuities, under a life insurance, or endowment 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 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. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to three per cent of the aggregate premiums or consideration paid for such annuity, whether or not paid during the taxable year, until the aggregate amount excluded from gross income under the income tax laws of this state plus the amounts received prior to January 1, 1933 (after deducting such proportion of such aggregate amount and amounts received as is represented by interest accrued prior to January 1, 1933), in respect to such annuity equal the aggregate premiums or consideration paid for such annuity. 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 hereunder;

(4) 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 clause, shall include reimbursement for medical, hospital, and funeral expenses in connection with such sickness, injury, or death;

(5) Amounts received by any person from the United States or the State of Minnesota by way of a pension, public employee retirement benefit, social security benefit or railroad retirement benefit, family allotment, or other similar allowance;

(6) 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;

(7) Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its instrumentalities shall be excluded from gross income for all taxable years ending prior to January 1, 1939; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its instrumentalities for taxable years ending prior to January 1, 1939, shall be excluded only to the extent that salaries, wages, commissions, fees, and other compensation received from the State of Minnesota, its political or governmental subdivisions, its municipalities, or its governmental agencies or instrumentalities for that year are excluded from gross income under the federal revenue acts; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its instrumentalities, by federal employees residing in "fed-

eral areas" shall be excluded from gross income for all taxable years ending prior to January 1, 1941;

(8) 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 constitutes 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;

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

(10) 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;

(11) The amounts distributed by cooperative buying, selling or producing associations, however organized, as patronage dividends shall not be included in the gross income of such associations;

(12) Clauses (3), (4), (9), and (10) shall not apply to corporations and clauses (6) and (7) shall not apply to corporations taxable under Section 290.02 or under Section 290.081.

(13) Income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(14) *The rental value of a dwelling house and of appurtenances thereof furnished to a minister of the gospel as part of his compensation.*

Sec. 9. Minnesota Statutes 1941, Section 290.12, Subdivision 2, is hereby amended to read as follows:

290.12. Subd. 2. **Adjustments.** In computing the amount of gain or loss under subdivision 1, proper adjustment shall be made for any expenditure, receipt, loss, or other item properly chargeable to capital account by the taxpayer during his ownership thereof. The basis shall be diminished by the amount of the deductions for exhaustion, wear, tear, obsolescence, depletion, and the allowance for amortization of bond premium if an election to amortize was made in accordance with Section 290.09 (14), which could, during the period

of his ownership thereof, have been deducted by the taxpayer under this chapter 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 such 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 290.13, and in the case of a transaction referred to in section 290.14, clause (7), 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.

Sec. 10. Minnesota Statutes 1941, Section 290.18, is amended as follows:

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

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

(2) That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state, and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries and so far as not entering into the computation of the net income assignable to this state under Section 290.19, shall be allowed which the taxpayer's gross income from sources within this state, as determined under Section 290.17, clauses (1), (2), (3) and (5), bears to his gross income from all sources, including that entering the computations provided for

by Section 290.19; provided that taxes of the kind deductible under Section 290.09, clause (3), shall, so far as within the description of deductions deductible under this clause, be deductible in their entirety if paid to the State of Minnesota, or any of its subdivisions authorized to impose such taxes, and thereupon be excluded in making the computation of deductions, as in this clause provided;

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

Sec. 11. Minnesota Statutes 1941, Section 290.37, as amended by Laws 1943, Chapter 656, Section 14, is hereby amended to read as follows:

290.37. Who shall make returns. *Subdivision 1.* The following persons shall make a return which shall contain or be verified by a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, for each taxable year, or fractional part thereof where permitted or required by law:

(a) Individuals with respect to their own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credit allowed, or *a single individual if his gross income exceeds \$1,000, or a married individual if his gross income exceeds \$2,000; provided that if the aggregate gross income of a husband and wife exceeds \$2,000 a joint or separate returns shall be filed.*

Subd. 2. The following persons shall make a return under oath for each taxable year, or a fractional part thereof where permitted or required by law:

(a) 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 if such taxable net income exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed or if such decedent's gross income for the afore-said period exceeds \$1,000.

(b) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed or if such estate's gross income exceeds \$1,000.

(c) The trustee or other fiduciary of property held in trust with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if the gross income of such trust exceeds \$1,000, if in either case such trust belongs to the class of taxable persons.

(d) The guardian of an infant or other incompetent person with respect to such infant's or other person's taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if their gross income exceeds \$1,000.

(e) Every corporation with respect to its taxable net income if in excess of \$1,000, or if its gross income exceeds \$5,000. The return in this case shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer.

(f) The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed (or, if the taxpayer is a corporation, if the taxable net income exceeds \$1,000), or if such taxpayer's gross income exceeds \$5,000.

Sec. 12. Minnesota Statutes 1941, Section 290.49, as amended by Laws 1943, Chapter 656, Section 15, is hereby amended to read as follows:

290.49. Assessment of tax. Subdivision 1. The amount of taxes assessable with respect to all taxable years ending after January 1, 1937, shall be assessed within three and one-half years after the return is filed. Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by registered mail to the post office address given in the return, and the record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Subd. 2. In the case of income received during the lifetime of a decedent, or by his estate during the period of ad-

ministration, or by a corporation, the tax shall be assessed within 18 months, and any proceeding in court for the collection of such tax shall be begun within two years after written request for such assessment (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but no assessment shall be made after the expiration of three and one-half years after the return was filed, and no action shall be brought after the expiration of four years after the return was filed. This *subdivision* shall not apply in the case of a corporation unless

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

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

(3) The dissolution is completed.

(e) Subd. 3. If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within five years after the return was filed.

Subd. 4. If the taxpayer omits from gross income an amount properly includible therein under Section 290.01, *Subdivision 21*, as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within four years after the return was filed.

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

Subd. 6. In the case of a false or fraudulent return with intent to evade tax or of failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time.

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

(1) within four years after the return was filed, or

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

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

Subd. 8. In the case of a corporation, if before the expiration of the time prescribed by *Subdivision 1* hereof for the assessment of the tax, and if the commissioner has effected an examination of the taxpayer's return and supporting books and records, and has prepared a proposed redetermination of the tax liability and mailed a copy of its proposed redetermination to the taxpayer and has afforded the taxpayer an opportunity to appear before him and duly protest such redetermination, and if the commissioner and the taxpayer are unable to agree upon the correct tax liability because of a disagreement as to a material fact or point of law, then before the expiration of the time prescribed by *Subdivision 1* hereof for the assessment of the tax, the commissioner and the taxpayer may consent in writing to the assessment of the tax, and the tax not exceeding the amount of the proposed redetermination herein provided for, may be assessed at any time prior to the expiration of the time agreed upon.

Sec. 13. Income from services of child; where included. *Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child. All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of this section shall be deemed to have been paid or incurred by the child. For the purposes of this section the term "parent" includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect to the child. Any tax assessed against the child to the extent attributable to amounts includible in the gross income of the child and not of the parent solely by reason of this section shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.*

Sec. 14. Common trust fund not taxed. *Subdivision 1.* *A common trust fund shall not be subject to taxation under this act and for this purpose the term "common trust fund" means a fund maintained by a bank (taxable under Section 290.361) exclusively for the collective investment and re-investment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator or guardian; and*

in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

Subd. 2. The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual except that (1) the gains and losses from sales or exchanges of capital assets shall be segregated and shall not enter into the computation of ordinary net income or net loss; and (2) no credit provided in Section 290.21 (2) for contributions shall be allowed.

Subd. 3. Each participant in the common trust fund in computing its net income shall include, whether or not distributed and whether or not distributable, (1) its proportionate share of the ordinary net income or net loss of the common trust fund; and (2) as a part of its gains and losses from sales or exchanges of capital assets, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets.

Subd. 4. No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by a participant.

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

Subd. 6. If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing net income of the participant for its taxable year, shall be based upon the net income of the common trust fund for its taxable year ending within the taxable year of the participant.

Sec. 15. Laws 1943, Chapter 107, is hereby amended as follows:

290.65. Exemptions, members of armed forces. *Subdivision 1.* The first \$2,000 received by any individual as com-

compensation for personal services in the Armed Forces of the United States or the United Nations, shall be excluded from gross income in computing income taxes under the provisions of Sections 290.01 through 290.63, as amended. This section shall apply to the taxable year 1942 and all subsequent taxable years, but shall not apply to any period beyond two years after the cessation of hostilities as determined by act of Congress or by the President of the United States.

Subd. 2. The limitations of time provided by Sections 290.01 through 290.63, as amended, relating to income taxes, and Sections 271.01 through 271.20, as amended, relating to the Board of Tax Appeals, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the Board of Tax Appeals from orders relating to income taxes, and (f) appealing to the Supreme Court of Minnesota from decisions of the Board of Tax Appeals relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is, or has been for any period commencing after December 7, 1941, continuously and for more than 90 days outside the United States, and for a further period of six months after his return to the United States.

Subd. 3. No interest upon any income tax shall be assessed or collected from any individual with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 2 of this section; provided, that interest shall accrue, notwithstanding such extension, for such part of said period as the individual is not serving in the Armed Forces of the United States or the United Nations. No penalty shall be assessed against or collected from any individual by reason of failure, during the extension of the periods of time as provided in subdivision 2, to perform any act required by the laws prescribed in said subdivision. No interest shall be paid upon any income tax refund to any individual with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 2 of this section.

Subd. 4. The limitations of time for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 2 are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided.

For the purpose of this subdivision the period of six months after return to the United States, as provided in subdivision 2, shall not begin to run until written notice of such return is filed with the Commissioner of Taxation.

Subd. 5. Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 2, within which any act is required or permitted to be done.

Subd. 6 The term "United States" as used in this section does not include Alaska, Hawaii, Canal Zone or the Caribbean Islands.

Subd. 7. The provisions of subdivision 2 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of an executor, administrator, or guardian, in this state, for any individual described therein *except as provided in subdivision 15 of this section.*

Subd. 8. This section shall apply to all periods of limitation which expire after the passage of this act. If any such period has expired prior to the passage of this act, and subsequent to December 7, 1941, and the right of any individual described in subdivision 2 of this section is barred thereby, the said period of limitation is hereby revived and extended as provided in this section, and any taxes, penalty or interest assessed contrary to the provisions of subdivision 3 of this section shall be abated.

Subd. 9. The limitations of time provided by *Sections 290.01 through 290.63*, as amended, relating to income taxes, and *Sections 271.01 through 271.20*, as amended, relating to the Board of Tax Appeals, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the Board of Tax Appeals from orders relating to income taxes, and (f) appealing to the Supreme Court from decisions of the Board of Tax Appeals relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is or has been continuously for any period beginning after December 7, 1941, serving in the Armed Forces of the United States, or the United Nations, and for a further period of six months after the termination of such service, provided, that the ability of such individual to file the return, pay the tax or any part thereof, or any interest or penalty thereon, or to perform any other act described in this subdivision is materially impaired by reason of such service, *but if an extension of time is granted, the fact that such individual's ability to pay was not*

impaired, shall not prevent the operation of the extensions of time herein provided. The commissioner may by regulation require the filing of a statement or affidavit or other proof, at the time the return or tax is due or other act is required to be done, stating the fact of inability to comply with the requirements of law because of service in the Armed Forces of the United States or the United Nations.

Subd. 10. No interest upon any income tax shall be assessed or collected from any individual, and no interest shall be paid upon any income tax refund to any individual, with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 9 of this section. No penalty shall be assessed or collected from any such individual by reason of failure during such period to perform any act required by the laws described in subdivision 9 of this section.

Subd. 11. The limitations of time provided for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 9, are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided. For the purpose of this subdivision the period of six months after termination of service in the Armed Forces, as provided in subdivision 9, shall not begin to run until written notice of such termination is filed with the Commissioner of Taxation.

Subd. 12. Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 9, within which any act is required or permitted to be done.

Subd. 13. The provisions of subdivision 9 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of an executor, administrator, or guardian, in this state, for any individual described therein *except as provided in subdivision 15 of this section.*

Subd. 14. This section shall apply to all periods of limitation which expire after the passage of this act. If any such period has expired prior to the passage of this act, and subsequent to December 7, 1941, and the right of any individual described in subdivision 9 of this section is barred thereby, the said period of limitation is hereby revived and extended

as provided in this section, and any taxes, penalty or interest assessed contrary to the provisions of subdivision 10 of this section shall be abated.

Subd. 15. In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the United Nations prior to the termination of hostilities as proclaimed by Congress or by the President of the United States, any income tax imposed under the provisions of Sections 290.01 through 290.63, shall not be imposed with respect to the taxable year in which falls the date of his death, and such tax imposed for any prior taxable years which is unpaid at the date of his death (including additions to the tax, interest and penalties) shall not be assessed, and if assessed, the assessment shall be abated and if collected, should be credited or refunded as an overpayment. In addition, upon the filing of a claim for refund within seven years after the termination of hostilities as set forth above, the tax paid or collected with respect to any taxable year during which such decedent was in active service shall be refunded.

Subd. 16. The Commissioner of Taxation shall have power, with respect to individuals referred to in this section, to abate penalties and interest when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the Attorney General.

Sec. 16. Repeal. Laws 1943, Chapter 656, Section 20, is hereby repealed as of midnight, December 31, 1944.

Sec. 17. Income in respect of decedents. *Subdivision 1. Inclusion in Gross Income of Income in Respect of Decedents.*

(1) General Rule. — The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) *the person who acquires from the decedent the right to receive the amount by bequest, devise or inheritance, if the amount is received after a distribution by the decedent's estate of such right.*

(2) *Income in case of Sale, Etc. — If a right, described in paragraph (1) of this subdivision, to receive an amount is transferred by the estate of the decedent or a person who receives such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For the purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, but does not include a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent except as provided in subdivision 3 of this section.*

(3) *Character of Income Determined by Reference to Decedent. — The right, described in paragraph (1) of this subdivision, to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction by which the decedent acquired such right; and the amount includible in gross income under paragraph (1) or (2) of this subdivision shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.*

Subd. 2. Allowance of Deductions and Credit. The amount of any deductions specified in Sections 290.09 (1), (2), (3) or (7) (relating to deductions for expenses, interest, taxes and depletion) in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) *Expenses, Interest and Taxes. — In the case of a deduction specified in Sections 290.09 (1), (2) or (3), in the taxable year when paid*

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction relates, to the person who, by reason of the death of the decedent or by bequest, devise or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion. — In the case of the deduction specified in Section 290.09 (7) to the person described in subdivision 1 (1), (A) (B) or (C) of this section who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

Subd. 3. Treatment of Non-residents.

(1) If a right described in subdivision 1 of this section to receive an amount is transferred to a non-resident by the executor or administrator of an estate, the fair market value of such right at the date of the transfer shall be included in the gross income of the estate for the year in which such transfer occurs and the value of such right shall not be allowed as a deduction in computing the taxable net income of the estate. The estate shall not include the value of such right in its gross income and the executor or administrator shall be relieved of any further liability with respect to such right if the non-resident; (A) includes the fair market value of such right (as of the date the right is received) in his gross income for the year such right is received and pays the tax thereon, or (B) elects to include the amount received in payment of such right in his gross income for the year in which such payment is received and pays the tax thereon in the same manner as a resident of this state and files a bond with the commissioner of taxation during the year such right is received; in such form and in such amount as the commissioner may deem necessary to assure payment of the tax. A bond required under (B) shall be deemed sufficient if in an amount equivalent to the tax which would be due if the method provided in (A) were followed.

Sec. 18 Minnesota Statutes 1941, Section 290.26 is hereby amended as follows:

290.26. Computation of net income of estate or trust. Subdivision 1. A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall not be taxable under Section 290.22 of this act and no other provisions of this act shall apply with respect to such trust or its bene-

fiary if such trust or beneficiary comes within the provisions of Section 165 of the Internal Revenue Code as adapted to the provisions of this act under regulations issued by the Commissioner of Taxation.

Subd. 2. Contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan shall be allowed as a deduction in accordance with the provisions of Section 23 (p) of the Internal Revenue Code, as adapted to the provisions of this act under regulations issued by the Commissioner of Taxation.

Subd. 3. Distributions received by a beneficiary from a trust or annuity plan of the kind described in subdivision 1 or 2 of this section shall be treated in accordance with the provisions of Section 165 (b) and (c) and Section 22 (b) 2 of the Internal Revenue Code as adapted to the provisions of this act by regulations issued by the Commissioner of Taxation.

Subd. 4. The provisions of subdivisions 1; 2 and 3 of this section shall be applicable to the same taxable years as provided in Section 162 (d) of the Revenue Act of 1942 Title I as adapted to the provisions of this act by regulations issued by the Commissioner of Taxation.

Sec. 19. Minnesota Statutes 1941, Section 290.01, Subdivision 21, as amended by Laws 1943, Chapter 656, Section II, is hereby amended to read as follows:

290.01. *Subd. 21. Dividends. (1) The term "dividends" shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, (a) out of its earnings or profits accumulated after December 31, 1932, or (b) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. 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.*

(2) For the purposes of this section every distribution is presumed to be made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of tangible property with situs in Minnesota, accrued,

before January 1, 1933, may be distributed exempt from tax, after the earnings and profits accumulated after December 31, 1932, have been distributed, but any such tax-free distribution shall be applied against and reduce the cost or other income tax basis of the stock with respect to which such distribution is made. If such or any similar tax-free distributions exceed such cost or other income tax basis, any excess shall be treated in the same manner as a gain from the sale or exchange of property for the taxable year in which received by the distributee.

(3) 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 cancelation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in cancelation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits. A dividend shall be deemed a stock dividend only if made in stock of the same kind or class as that with respect to which it was distributed;

(4) 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 290.12, but shall be recognized only to the extent provided in section 290.13, and shall be taken into account in computing net income only to the extent provided in section 290.16, subdivision 2. 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. No amount received in liquidation shall be treated as the distribution of an ordinary dividend.

Sec. 20. Minnesota Statutes 1941, Section 290.53, as amended by Laws 1943, Chapter 656, Section 17, is hereby amended to read as follows:

290.53. Penalties. *Subdivision 1.* If any tax imposed by this act, or any portion thereof, is not paid within the time herein specified for the payment thereof, or within 30 days after final determination of an appeal to the Board of Tax Appeals relating thereto, there shall be added thereto a specific penalty equal to five per centum of the amount so remaining unpaid. Such penalty shall be collected as part of said tax,

and the amount of said tax not timely paid, together with said penalty shall bear interest at the rate of *four* per cent per annum from the time such tax should have been paid until paid. Interest accruing upon the tax due as disclosed by the return or upon the amount determined as a deficiency from the date prescribed for the payment of the tax (if the tax is paid in installments, from the date prescribed for the payments of the first installment) shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under Section 290.45, subdivision 2, interest shall be paid at the rate of *four* per cent per annum from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

Subd. 2. 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 fifty 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. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this section.

Subd. 3. In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false return, with an intent to evade the tax, or a part thereof, imposed by this act, shall be guilty of a felony. The term "person" as used in this subsection includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

Subd. 4. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 5. The commissioner shall have power to abate penalties when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general.

Sec. 21. Minnesota Statutes 1941, Section 290.50, as amended by Laws 1943, Chapter 656, Section 16, is hereby amended to read as follows:

290.50. Refundment of overpayments. Subdivision 1. A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in subdivisions 1 and 5 of Section 290.48) an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer; except that if the claim relates to an overpayment on account of failure to deduct a loss due to a bad debt or to a security becoming worthless, the period shall be seven years from the date the return was filed, and in such case the refund shall be limited to the amount of such overpayment; but no claim for any year ending prior to January 1, 1939, shall be allowed, unless (1) the deduction was claimed by the taxpayer with respect to a subsequent year, and disallowed by the commissioner of taxation prior to January 1, 1943, and (2) the claim is filed before December 1, 1943. If the claim is not filed within 3½ years after the return is filed, or, to the extent that it refers to bad debt or worthless stock losses, within 7 years after the return is filed, the refund shall not exceed the amount paid within two years prior to the filing of the claim. Upon the filing of a claim the commissioner shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of two per cent 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.

Subd. 2. If the claim is denied in whole or in part, the taxpayer may commence an action against the commissioner to recover any overpayments of taxes claimed to be refundable but for which the commissioner has issued no certificate of refundment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or if an estate or trust, of the principal place of its administration, or in the district court for Ramsey County. Such action may be commenced after

the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. If the commissioner has not acted within two years after the claim is filed it shall be considered denied.

Subd. 3. Either party to said action may appeal to the supreme court as in other cases.

Sec. 22. Minnesota Statutes 1941, Section 290.361, is hereby amended to read as follows:

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

Subd. 2. The taxable net income shall be computed in the manner provided by this chapter except that in the case of national and state banks: (a) the rate shall be eight per cent instead of six per cent; (b) the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940, instead of January 1, 1933; (c) property consisting of investments in bonds, stocks, notes, debentures, mortgages, certificates, or any evidence of indebtedness, and any property acquired in liquidation thereof when such property is held for investment or for sale, shall not be deemed to be capital assets within the meaning of the limitation on losses imposed by Minnesota Statutes 1941, Section 290.16; and (d) in computing net income there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this act, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the bank owned by the United States or such instrumentality.

Subd. 3. The state is hereby adopting the method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of the Revised Statutes of the United States.

Subd. 4. The revenues derived from the excise tax on banks shall be paid into the state treasury and credited to a special fund, from which shall be paid all refunds of taxes erroneously collected from banks as certified by the commissioner. The balance of this fund shall be transmitted, on the last days of May and November of each year, to the respective counties in which are located the banks paying the tax. The county auditor shall apportion and distribute the respective amounts paid by each bank in his county, less refunds paid

to that bank, in the same manner and on the same basis as he distributes taxes on personal property in the taxing district in which that bank is located.

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

Sec. 23. Minnesota Statutes 1941, Section 271.06, Subdivision 2, is hereby amended to read as follows:

271.06.

Subd. 2. Appeals from orders; time; notice; intervention. Except as otherwise provided by law, within 30 days after notice of the making and filing of such order of the commissioner, and in any case within 60 days after the making and filing of such order, the appellant, or his attorney, shall serve a notice of appeal upon the commissioner and file the original, with proof of such service, with the board; provided, that any member of the board, for cause shown, may by written order extend the time for appealing for an additional period, not exceeding 30 days. The notice of appeal shall refer to the order appealed from, state specifically the points of both law and fact which are questioned by the appellant, and state an address within the state at which service of notice and other papers in the matter may be made upon the appellant; provided, that the board may, upon a showing of proper cause, permit an amendment of the notice of appeal. Every appellant shall be deemed to have waived all defenses and objections not specified in the notice of appeal. Within five days after receipt, the commissioner shall transmit a copy of the notice of appeal to the attorney general in all cases where the amount at issue exceeds \$100.00. The attorney general shall represent the commissioner, if requested, upon all such appeals except in cases where the attorney general has appealed in behalf of the state, or in other cases where he deems it against the interests of the state to represent the commissioner, in which event the attorney general may intervene or be substituted as an appellant in behalf of the state at any stage of the proceedings.

Sec. 24. Minnesota Statutes 1941, Section 271.06, Subdivision 6, is hereby amended to read as follows:

271.06.

Subd. 6. Hearings before Board of Tax Appeals; determination of issues. The board shall hear, consider, and determine every appeal de novo upon the issues made by the notice and the

return. The board shall hold a public hearing in every case, of which ten days' notice shall be given by mail to all parties to the proceeding. All such parties shall have an opportunity to offer evidence and argument at the hearing; provided, that the order of the commissioner in every case shall be prima facie valid. In case no appellant shall appear the board shall enter its order affirming the order of the commissioner of taxation from which the appeal was taken.

Sec. 25. Minnesota Statutes 1941, Section 271.08, is hereby amended to read as follows:

271.08. Findings of fact; decision. *Subdivision 1.* The board shall determine every appeal by written order containing findings of fact and the decision of the board. A memorandum of the grounds of the decision shall be appended. A certified copy of the order shall be transmitted to the commissioner of taxation and filed in his office. Notice of the entry of the order and of the substance of the decision shall be given by mail to all other parties who have appeared, and also, in all cases where the amount at issue exceeds \$100.00, to the attorney general.

Subd. 2. Upon the filing of the order of the board, described in subdivision 1, with the Clerk of the District Court of Ramsey County, within six months after such order has become final, judgment shall be entered thereon in the same manner as in the case of an order of the District Court, as provided in Section 546.27.

Sec. 26. Minnesota Statutes 1941, Section 271.12, is hereby amended to read as follows:

271.12. When order effective. No order for refundment by the commissioner of taxation or the board of tax appeals shall take effect until the time for appeal therefrom or review thereof by all parties entitled thereto has expired. Otherwise every order of the commissioner or the board shall take effect immediately upon the filing thereof, and no appeal therefrom or review thereof shall stay the execution thereof or extend the time for payment of any tax or other obligation unless otherwise expressly provided by law; provided, that in case an order which has been acted upon, in whole or in part, shall thereafter be set aside or modified upon appeal, the determination upon appeal or review shall supersede the order appealed from and be binding upon all parties affected thereby, and such adjustments as may be necessary to give effect thereto shall be made accordingly, subject to any rights of action or defense of the taxpayer, as herein provided. If it be finally

determined upon such appeal or review that any person is entitled to refundment of any amount which has been paid for a tax or other obligation, such amount, unless otherwise provided by law, shall be paid to him by the state treasurer, or other proper officer, out of funds derived from taxes of the same kind, if available for the purpose, or out of other available funds, if any, with interest at six per cent, *unless a different rate of interest is otherwise provided by law, in which case such other rate shall apply*, upon certification by the commissioner of taxation. If any tax, assessment, or other obligation be increased upon such appeal or review, the increase shall be added to the original amount, and may be enforced and collected therewith or in separate proceedings in like manner as the original amount.

Sec. 27. Destruction of income tax returns. *The commissioner of taxation is hereby authorized to destroy all income tax returns, including audit reports, orders and correspondence relating thereto, which have been on file in his office for a period of four years or more, but only after he has made copies of such income tax returns (and in his discretion copies of such audit reports, orders, or correspondence as he may deem necessary) by either recording them on microfilm, making photostatic copies thereof, or preserving copies thereof by a similar means. Such copies, when certified to by the commissioner of taxation, shall be admissible in evidence in the same manner and be given the same effect as the original documents destroyed.*

Sec. 28. Net operating loss. *Subdivision (1) The term "net operating loss" as used in this section shall mean the excess of the deductions of the kind provided for in Section 290.09, permitted to be taken in computing a taxpayer's taxable net income, as that term is defined in Section 290.01, subdivision 19, over the gross income used in computing such taxable net income, with the exceptions, additions and limitations provided in subdivision (4) of this section.*

Subd. (2) If for any taxable year after December 31, 1944, a taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (a) with the exceptions, additions and limitations provided in subdivision (4) (b) through (h) of this section and (b) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss.

Subd. (3) *The amount of the net operating loss allowed as a deduction in computing net income shall be the aggregate of the net operating loss carry-overs to the taxable year reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subdivision (4) (b) through (h) of this section) exceeds the net income (computed without such deduction).*

Subd. (4) *The exceptions, additions and limitations referred to in subdivisions (1), (2), and (3) of this section shall be as follows:*

(a) *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. For the purpose of this paragraph, deductions and gross income shall be computed with the exceptions, additions and limitations provided in paragraphs (4) (b), (d), (e), (f), (g), and (h) of this subdivision.*

(b) *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 290.08, 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.*

(c) *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 290.19, the net operating loss shall be computed for any such business in the same manner as if the entire gross income therefrom were assignable to this state, and the entire amount of such net operating loss (computed with the exceptions, additions and limitations provided in paragraphs (b), (d), (e), (f), (g) and (h) of this subdivision) shall be carried over in accordance with the provisions of subdivisions (2) and (3) of this section as a deduction in computing net income. The net operating loss referred to herein shall be separately computed in regard to such separate business.*

(d) *No taxpayer shall be allowed a net operating 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.

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

(f) Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 290.16, subdivision 2. As so computed, the amount deductible on account of such losses shall not exceed the amount includible on account of such gains.

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

(h) Federal income and excess profits taxes shall not be allowed as a deduction in computing a net operating loss.

Subd. (5) Wherever, under the provisions of this act, any taxpayer is required or permitted to make a return for a period of less than twelve months, such period shall be deemed a taxable year in the application of the provisions of this section.

Sec. 29. Minnesota Statutes 1941, Section 290.23, as amended by Laws 1943, Chapter 656, Section 12, is hereby amended to read as follows:

290.23. Estates or trusts; computation; credits; deductions. *Subdivision 1.* The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in subdivisions 2, 3, and 4 of this section.

Subd. 2. There shall be allowed as a credit (in lieu of the credit for charitable and other contributions authorized by section 290.21, clause (2)), any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 290.21, clause (2), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.

Subd. 3. There shall be allowed as an additional deduction in computing the net income of the estate or trust the

amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries subject to taxation under this act whether distributed to them or not. As used in this subsection "income which is to be distributed currently" includes income of the estate or trust which, within the taxable year, becomes payable to the beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under *subsection 4* of this section in the same or any succeeding taxable year.

Subd. 4. In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary, to the extent that such amount is properly includible in computing the taxable net income of such legatee, heir, or beneficiary under the provisions of this chapter.

Subd. 5. *The benefit of the deduction for net operating loss allowed by Section 1 of this act shall be allowed to estates and trusts under regulations prescribed by the commissioner. The benefit of such deduction shall not be allowed to a common trust fund but shall be allowed to the participants in the common trust fund under regulation prescribed by the commissioner.*

Sec. 30. Minnesota Statutes 1941, Section 290.21, is hereby amended to read as follows:

290.21. Credits against tax. *Subdivision 1.* The tax imposed by this chapter 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.

Subd. 2. The taxable net income of the partnership shall be assigned to this state under sections 290.17 to 290.36 and 290.37 to 290.39.

Subd. 3. Each partner shall be allowed as a credit against his taxable net income his proportionate part of the contributions or gifts that are within section 290.21, clause (2), made by the partnership during its taxable year, but the sum of this latter credit allowed hereunder and that allowed the partner under section 290.21, clause (2), shall not exceed the limit therein specified.

Subd. 4. The taxable net income of a partnership which a partner is required hereunder to take into his taxable net income shall be taxed at rates applicable to the partner's taxable year during which he is required to include it in his taxable net income.

Subd. 5. *The benefit of a deduction for net operating loss allowed by section 1 of this act shall not be allowed to a partnership but shall be allowed to the members of the partnership under regulations prescribed by the commissioner.*

Sec. 31. Application. The provisions of this act shall apply to all taxable years beginning after December 31, 1944, except as otherwise expressly provided therein and except as follows: the amendments by Section 15 of this act to Laws 1943, Chapter 107, shall take effect as if contained in the original enactment thereof; Sections 4, 5, and 17 shall apply in the case of all individuals dying on or after January 1, 1945, and at the election of an executor or administrator of an estate or if there be no estate the principal recipient of the rights described in Section 17 they shall apply in the case of individuals who died on or after January 1, 1943, and prior to January 1, 1945; Section 6 shall apply to all claims filed after the passage of this act; Section 9 shall apply to all taxable years beginning after December 31, 1942; Section 12 shall apply to all existing liabilities; Section 20 shall apply to all assessments hereafter made; Section 21 shall apply to all refunds hereafter made; the provisions of Subdivision 2, Clause (c) of Section 22 shall apply to all taxable years beginning on or after January 1, 1944, and the provisions of Subdivision 2, Clause (d) of Section 22 shall apply to all taxable years beginning on or after January 1, 1940.

Approved April 23, 1945.