

lates any provision of this act shall be guilty of a misdemeanor.

Approved April 22, 1939.

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CHAPTER 445—H. F. No. 933

*An act relating to necessary expenses of the county welfare board, and amending the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 974-16.*

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

Section 1. **Law amended.**—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 974-16, is hereby amended so as to read as follows:

**"974-16. Salary and expenses of County Welfare Board.**—The salaries, office, traveling and other necessary expenses of the County Welfare Board, *including such amount as may be allowed in the discretion of the county board as compensation for cashing old age assistance and other welfare board checks*, shall be paid by the county, except as provided in *the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 974-11 (c)* and shall be subject to reimbursement out of state and Federal funds as may be provided by law."

Approved April 22, 1939.

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CHAPTER 446—H. F. No. 1614

*An act to amend Laws 1933, Chapter 405, Extra Session Laws 1935, Chapter 87, and Extra Session Laws 1937, Chapter 49, and Laws 1939, Chapter 59, being acts imposing and relating to an income tax, and taxes measured by income.*

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

Section 1. **Law amended.**—**Excise tax on banks.**—Laws 1933, Chapter 405, Section 5, sub-section (a) as amended by Extra Session Laws 1937, Chapter 49, Section 5, is hereby amended so as to read as follows:

(a) National and state banks, *except as such banks are subject to the excise tax imposed by sections 32-4 and 32-5.*

Sec. 2. **Law amended—Exceptions.**—Laws 1933, Chapter 405, Section 5, sub-section (c) as amended by Extra Session

Laws 1937, Chapter 49, Section 5, is hereby amended so as to read as follows:

(c) Farmers' mutual insurance companies organized and existing under the laws of the state and credit unions organized under Chapter 206, Laws 1925, and *building and loan and savings and loan associations organized under the laws of the State of Minnesota or of the United States.*

**Sec. 3. Law amended—Specific exemptions.**—Extra Session Laws of 1937, Chapter 49, Section 6 (c) (2) is hereby amended so as to read as follows:

(c) The taxes due under the foregoing computation shall be credited with the following amounts:

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.*

**Sec. 4. Law amended—What constitutes gross income.**—Laws of 1933, Chapter 405, Section 9, is hereby amended by adding thereto two new sub-sections to be known as sub-sections (d) and (e) to read as follows:

(d) *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 section 9 (a), and such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includable in respect of such period or a prior period.*

(e) *The deductions and credits provided for in this act shall be taken for the taxable year in which "paid or accrued" or "paid or 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 there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.*

**Sec. 5. Law amended—Federal employees' salaries subject to tax.**—Laws 1933, Chapter 405, Section 12, Subsection (g) is hereby amended to read as follows:

(g) *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 further than 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 said year are excluded from gross income under the Federal Revenue Acts.*

**Sec. 6. Law amended.—Application of act.**—Laws 1933, Chapter 495, Section 12, sub-section (1) is hereby amended so as to read as follows:

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

**Sec. 7. Law amended—Computation of net income.**—Laws 1933, Chapter 405, Section 14, as amended by Extra Session Laws 1937, Chapter 49, Section 11 is hereby amended, by adding thereto a new sub-section to be known as sub-section (g) to read as follows:

(g) *In computing net income, no deduction shall be allowed under Section 13 (a), relating to expenses incurred, or under Section 13 (b), relating to interest accrued; and*

(1) *If such expenses or interest are not paid within the taxable year or within two and one-half months after the close thereof; and*

(2) *If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the tax payer ends; and*

(3) *If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under Section 14 (f).*

**Sec. 8. Law amended—Exemptions for building and loan associations.**—Laws 1933, Chapter 405, Section 27, Sub-sections (c) and (d) as amended by Extra Session Laws 1937, Chapter 49, Section 18, are hereby amended so as to read as follows:

(d) *To each mutual savings bank organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid or credited during the taxable year of its depositors.*

**Sec. 9. Law amended.**—Laws 1933, Chapter 405, Section 28, is hereby amended so as to read as follows:

**Sec. 28. Application of Act.** — (a) *The taxes imposed by this act upon individuals shall apply to the income of estates or of any kind of property held in trust, including*

(1) *income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;*

(2) *income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;*

(3) *income received by estates of deceased persons during the period of administration or settlement of the estate; and*

(4) *income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.*

(b) *The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 28-5 (relating to revocable trusts) and section 28-6 (relating to income for benefit of the grantor). For return made by fiduciary, see Section 33.*

**Sec. 10. Law amended.**—Laws 1933, Chapter 405 is hereby amended by adding thereto six new sections, immediately following Section 28, to be known as sections "28-1", "28-2",

“28-3”, “28-4”, “28-5”, “28-6”, and to read respectively as follows:

*Section 28-1. Computation of net income*—*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 that:*

(a) *There shall be allowed as a credit (in lieu of the credit for charitable, etc., contributions authorized by section (27) (b)) 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 27 (b), 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.*

(b) *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 next income of the beneficiaries domiciled within this state whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under sub-section (c) of this section in the same or any succeeding taxable year.*

(c) *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 domiciled within this state.*

*Section 28-2. Credits to estates or trust*.—*An estate or trust shall be allowed the same personal credit against the tax as is allowed to a single person under Section 6(c) (1).*

**Section 28-3. Computation of net income of estate or trust.**—*If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under Section 28(1) (b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1939) ending within or with his taxable year.*

**Section 28-4. Computation of net income of estate or trust.** (a) *A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of same or all of his employees.*

(1) *if contributions are made to the trust by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan:*

(2) *if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to purposes other than for the exclusive benefit of his employees, shall not be taxable under Section 28, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him.*

(b) **Taxable Year Beginning Before January 1, 1939—***The provisions of clause (2) of subsection (a) shall not apply to a taxable year beginning before January 1, 1939.*

### REVOCABLE TRUSTS

**Sec. 28-5. Revocable trusts.**—*Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested*

(1) *in the grantor, 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, or*

(2) *in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor.*

### INCOME FROM BENEFIT OF GRANTOR

Sec. 28-6 (a) *where any part of the income of a trust*

(1) *is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or*

(2) *may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or*

(3) *is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in Section 27 (b) relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.*

(b) *As used in this section, the term "in the discretion of the grantor" means "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".*

Sec. 11. **Taxes on trusts.**—Laws 1933, Chapter 405. Section 29, is hereby amended so as to read as follows:

Section 29(a) *The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this act, (including all provisions of the act for the collection of taxes.)*

(1) *The liability, at law or in equity, of a transferee of property of a taxpayer in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this act.*

(2) *The liability of a fiduciary under Chapter 405, Laws 1933, Section 48-a of the income tax act of 1933 as amended in respect of the payment of any such tax from the estate of the taxpayer. Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.*

(b) *The period of limitation for assessment of any such liability of the transferee or fiduciary shall be as follows:*

(1) *In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer;*

(2) *In the case of the liability of the transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three and one half years after the expiration of the period of limitation for assessment against the taxpayers; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.*

(3) *In the case of the liability of a fiduciary, not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later:*

(c) *For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.*

(d) *In the absence of notice to the commission under Section 29-1 (b), of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this act, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purpose of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.*

(e) *As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.*

**Sec. 12. Law amended.**—Laws 1933, Chapter 405, is hereby amended by adding thereto one new section immediately following section 29, to be known as Section 29-1:

**Section 29-1. Law amended.**—(a) *Upon notice to the com-*

*mission that any person is acting in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this act (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.*

(b) *Upon notice to the commission that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 29, the fiduciary shall assume, on behalf of such person, the powers, right, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.*

(c) *Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the commission.*

**Sec. 13. Law amended—Partnerships not taxed.**—Laws 1933, Chapter 405, Section 30, Subsection (c) as amended by Extra Session Laws 1937, Chapter 49, Section 20, is hereby amended so as to read as follows:

(c) *Each partner shall be allowed as a credit against his taxable net income his proportionate part of contributions or gifts that are within Section 27 (b) 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 (b) shall not exceed the limit therein specified.*

**Sec. 14. Law amended.—Assessment of tax.**—Laws 1933, Chapter 405, Section 46, as amended by Extra Session Laws 1935, Chapter 87, Section 1, and as amended by Extra Session Laws 1937, Chapter 49, Section 24, as amended by Laws of 1939, Chapter 59 is hereby revived and amended so as to read as follows:

**Section 45.**

(a) *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 commission 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 commission 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 commission.*

*(b) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within eighteen months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three and one-half years after the return was filed. This subsection (b) shall not apply in the case of a corporation unless*

*(1) Such written request notifies the commission 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.*

*(c) If the taxpayer omits from gross income an amount properly includable 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 without assessment, at any time within 5 years after the return was filed.*

*(d) If the taxpayer omits from gross income an amount properly includable therein under Section 21 (d) 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 without assessment, at any time within 4 years after the return was filed.*

*(e) For the purposes of subsections (a), (b), (c), and (d) a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.*

*(f) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.*

(g) *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 commission and the taxpayer, pursuant to the provisions of subsection (h) hereof.*

(h) *In the case of a corporation, if before the expiration of the time prescribed by subsection (a) hereof for the assessment of the tax, and if the commission has effected an examination of the taxpayer's return and supporting books and records, and has prepared a proposed re-determination 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 it and duly protest such redetermination, and if the commission 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 subsection (a) hereof for the assessment of the tax, the commission 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. 15. Law amended.—Laws 1933, Chapter 405, Section 47, is hereby amended so as to read as follows:

Section 47. Refundment of overpayments.—(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. Upon the filing of a claim the commission 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 commission shall issue its certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of three per cent per annum computed from the date of the pay-

ment 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) *If the claim is denied in whole or in part, the taxpayer may commence an action against the commission to recover any overpayments of taxes claimed to be refundable but for which the commission 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 commission has not then taken final action thereon, and shall be commenced within six months after notice of the order denying the claim and in any event within 18 months after the claim is filed. No claim for refund shall be allowed by the commission after the expiration of 18 months after the claim is filed.*

(c) *Either party to said action may appeal to the supreme court as in other cases.*

(d) *This section shall not apply to claims filed prior to the passage of this act, or pending actions for refunds, but shall apply to all other proceedings.*

Sec. 16. **Law repealed.**—Extra Session Laws 1937, Chapter 49, Section 26, Subsection (h), is hereby repealed.

Sec. 17. **Law amended.**—Laws 1933, Chapter 405, Section 50, as amended by Extra Session Laws 1937, Chapter 49, Section 27, is hereby amended so as to read as follows:

**Section 50. Commission to administer and enforce law.**—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 in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this act, which shall include a simplified form for *individual taxpayers having a gross income less than \$5,000* which statement shall be verified or sworn to by the taxpayer, listing gross income, deductions, net income, gross tax, personal credits and tax payable, provided, however, that detailed returns may subsequently be required of said persons by the commission. The commission shall dis-

tribute 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. The commission may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commission, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such commission may, after due notice and opportunity for hearing, suspend and disbar from further practice before it, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations.

Sec. 18. Law amended.—Laws 1933, Chapter 405, is hereby amended by adding thereto a new section, immediately following Section 50, to be known as Section 50-1, and to read as follows:

*Section 50-1. (a) May make agreements.—The Minnesota tax commission, or any officer or employee of the state income tax department, authorized in writing by the Minnesota tax commission, is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any state income and franchise tax for any taxable period ending prior to the date of the agreement.*

*(b) If such agreement is approved by the Minnesota tax commission within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.*

*(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employes, or agent of the state of Minnesota;*

(2) in any suit, action, or proceeding such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

**Sec. 19. Law amended.—May sue commission.**—Laws 1933, Chapter 405, Section 47, is hereby amended by inserting after subdivision (c) of such section the following subdivision:

*c-1. In any case where the commission shall have determined the tax liability of any corporation, and any taxpayer stockholder of such corporation, upon such determination of said corporation's tax liability, became entitled to a credit against his taxable net income on account of dividends received during the taxable year under the provision of subdivision of subdivision (g) of Section 27 of Chapter 405, Laws 1933, for any of the years during which said subdivision (g) was in effect, the said commission shall, provided that the taxpayer has filed a claim for refund on or before December 31, 1939, issue its certificate for refundment of the excess, if any, which such taxpayer has paid over and above the amount which the taxpayer would have been liable to pay after the allowance of such dividend credit, with interest at the rate of three 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 in the manner prescribed in subdivision (a) hereof; and if said commission shall fail within 90 days after the filing of such claim by the taxpayer to issue such certificate, the taxpayer may sue the commission for such overpayment at any time thereafter but not more than two years after the passage of this act.*

**Sec. 20. Laws to remain in force.**—All provisions of Laws 1933, Chapter 405 and Extra Session Laws of 1935, Chapter 87, and Extra Session Laws of 1937, Chapter 49, as they existed prior to the passage of this act, shall remain in full force and effect, so far as necessary to preserve any liability for taxes, interest and penalties incurred prior to the passage of this act, and to enforce the collection of such taxes, interest and penalties, and to enforce civil and criminal penalties.

**Sec. 21. Law amended.**—Laws 1933, Chapter 405, Section 43, subsection (a) is hereby amended so as to read as follows:

**Section 43. Shall examine tax payers' records.**—(a). The Commission shall, as soon as practicable after the return is filed, examine the same and make any investigation or exam-

ination 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 and fraudulent with intent to evade the tax, the installments of the tax shown by the taxpayer on his return which have not yet been paid shall be paid to the 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, *provided that no refundment shall be made except as provided in Section 47, after the expiration of three and one-half years after the filing of the return.*

Sec. 22. **Law amended.**—Laws of 1933, Chapter 405, Section 25, is hereby amended so as to read as follows:

Section 25 **Allocation of tax.**—(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. *The remaining net income shall be apportioned to Minnesota as follows:*

(1) *If the business consists of the manufacture in Minnesota or within and without Minnesota of personal property and the sale of said property within and without the state, said remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages;*

(a) *The percentage which the sales made within this state and through, from or by offices, agencies, branches or stores within this state is of the total sales wherever made;*

(b) *The percentage which the total tangible property, real, personal, and mixed, owned or used by the taxpayer in this state in connection with said trade or business is of the total tangible property real, personal, or mixed, wherever located, owned, or used by the taxpayer in connection with said trade or business; and*

(c) *The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with said trade or business is of the taxpayer's total payrolls paid or incurred in connection with said entire trade or business.*

(d) *Provided, however, that the percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70% of the percentage determined under subdivision (A) (1) (a) above, 15% of the percentage determined under subdivision (A) (1) (b) above, and 15% of the percentage determined under subdivision (a) (1) (c) above.*

(2) *If the business consists of the manufacture wholly without the State of Minnesota of personal property and the sale of said property within and without the State, said remainder shall be apportioned to Minnesota on the basis 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.*

(3) (a). *In all other cases the proportion of such remainder to be assigned to this State shall be that which the sales, gross earnings or receipts from business operations in whole or in part within this State bear to the total sales, gross earnings or receipts from business operations wherever conducted.*

(b) *If the methods prescribed under subsection (3) (a) will not properly reflect taxable net income assignable to this State, there shall be used if practicable and if such use will properly and fairly reflect such income (1) the arithmetical average of the three percentages set forth in subdivisions (a) (b) (c) of subsection (1) of this section, or (2) the separate or segregated accounting method.*

(4) *The sales payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used*

by the taxpayer at the beginning and close of the taxable year in respect of which the tax is being computed.

(5) For the purposes of this Section, in determining the amount of sales made within Minnesota, there shall be excluded therefrom sales negotiated or effect in behalf of the taxpayer by agents or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the taxpayer or by his agents or agencies outside the state and sales otherwise determined by the commission to be attributable to the business conducted on such premises. If the commission finds that the taxpayer maintains an office, warehouse or other places of business outside the state for the purpose of reducing its tax under this section it shall in determining the amount of taxable net income include therein the proceeds of sales attributed by the taxpayer to the business conducted at such place outside the state.

(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 this state.

Sec. 23. Law amended.—Laws of 1933, Chapter 405, Section 26, as amended by Extra Session Laws of 1937, Chapter 49, Section 29, is hereby amended so as to read as follows:

Sec. 26. Commission to prescribe methods.—*The methods prescribed by Section 25 shall be presumed to determine fairly and correctly the taxpayers net income allocable to this state; provided, however, that any taxpayer feeling aggrieved by the application to his case of the methods so prescribed, may petition the Commission for determination of such taxable net income on some other basis, including separate accounting. Thereupon, if the commission upon the petition of the taxpayer finds that the application of the methods prescribed by Section 25 will be unjust to the taxpayer, it may allow the use of the methods proposed by the taxpayer, or may determine the taxable net income by other methods if satisfied that such methods will fairly reflect the taxable net income properly assignable to this state.*

Sec. 24. Application of act.—*This law shall take effect*

*from and after its passage, but shall apply in computing taxes as follows:*

*Except as herein provided, the provisions of this act shall apply only to taxable years beginning after December 31, 1938.*

*The amendments made by this act to Chapter 405, Laws 1933, as heretofore amended, shall apply to the excise tax imposed upon banks by sections 32-4 and 32-5 for the taxable year beginning with January 1, 1939, and subsequent years.*

Approved April 22, 1939.

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#### CHAPTER 447—S. F. No. 280

*An act proposing an amendment to Section 36 of Article 4 of the Constitution of the State of Minnesota to change the requirements for publication of proposed amendments to charters of cities and villages.*

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

**Section 1. Proposed amendment to constitution.**—That the following amendment of Section 36 of Article 4 of the Constitution of the State of Minnesota is hereby proposed to the people of the State of Minnesota for their approval or rejection, which Section when amended shall read as follows:

“Section 36. Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state, as follows: The legislature shall provide, under such restrictions as it deems proper, for a board of fifteen freeholders, who shall be and for the past five years shall have been qualified voters thereof, to be appointed by the district judges of the judicial district in which the city or village is situated, as the legislature may determine, for a term in no event to exceed six years, which board shall, within six months after its appointment, return to the chief magistrate of said city or village a draft of said charter, signed by the members of said board, or a majority thereof. Such charter shall be submitted to the qualified voters of such city or village at the next election thereafter, and if four-sevenths of the qualified voters voting at such election shall ratify the same it shall, at the end of thirty days thereafter, become the charter of such city or village as a city, and supersede any existing charter and amendments thereof: Pro-