

## CHAPTER 656—H. F. No. 1413.

(AMENDING SECTIONS 290.01; 290.05; 290.06; 290.08; 290.50; 290.081; 290.09; 290.15; 290.16; 290.23; 290.29; 290.37; 290.49; 290.21; 290.53; 290.52; 290.62; 290.12; 290.14; AND 475.03, MINNESOTA STATUTES 1941.)

*An act relating to taxes on and measured by net income and taxes on money and credits and the assessed valuation thereof for purposes of debt limitation and classifications, amending Mason's Supplement 1940, Section 2394-1, Subdivision (c); 2394-6, Subsection (c) as amended by Laws 1941, Chapter 550, Section 3; 2394-12, Subdivision (a); 2394-13, Subdivision (c); 2394-13, Subdivision (e), as amended by Laws 1941, Chapter 550, Section 7; 2394-13, Subdivision (k); 2394-19 as amended by Laws 1941, Chapter 550, Section 9; 2394-20 Subdivision (b) as amended by Laws 1941, Chapter 550, Section 10; 2394-21 Subdivision (a) and (b); 2394-28a Subsection (b); 2394-29 Subdivision (b); 2394-33, Subdivision (a), 2394-46 as amended by Laws 1941, Chapter 550, Section 17; 2394-27 as amended by Laws 1941, Chapter 550, Sections 18 and 22; 2394-49, as amended by Laws 1941, Chapter 550, Section 19; 2394-50; 2394-12-1, as amended by Laws 1941, Chapter 429; 2394-12 as amended by Laws 1941, Chapter 18, Section 4 and by Laws 1941, Chapter 550, Section 5 and 6, Paragraphs (i) and (m); 2394-27 Subdivision (b); 2394-57 as amended by Laws 1941 Chapter 445 and by Laws 1943 Chapter —; 2394-13 as amended by Laws 1941, Chapter 550, Section 7; 2394-16; 2394-18; Mason's Minnesota Statutes of 1927, Section 1936; and adding new provisions.*

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

Section 1. **Definitions.**—Mason's Supplement 1940, Section 2394-1, subdivision (c), is amended to read as follows:

(c) The term 'corporation' shall include joint stock companies and corporations existing under the laws of any state or country; partnerships, limited or otherwise, the organization of which is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and the management of which is centralized in one or more persons acting in a representative capacity; associations (other than ordinary partnerships) and common-law trusts organized or conducted for profit.

Sec. 2. **Law amended—rates of tax—credits.**—Mason's Supplement 1940, Section 2394-6, subsection (c), as amended by Laws 1941, Chapter 550, Section 3, is amended to read as follows:

(c) 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. *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 of 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 subsection (c)* shall change during the taxable year, or if the taxpayer shall either be

come 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 subsection (c) 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. 3. Certain income from United States bonds may be treated as income.**—*Subdivision 1. In the case of obligations of the United States issued at a discount and redeemable for fixed amounts increasing at stated intervals, a corporate taxpayer may at its election treat such increase as income for any taxable year beginning after December 31, 1940, notwithstanding the fact that such taxpayer files its returns on the cash basis.*

*Subdivision 2. If at least 80 per cent of the total compensation for personal services covering a period of 36 months or more is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period preceding the date of receipt or accrual. This provision shall be applicable to taxable years beginning after December 31, 1940.*

*Subdivision 3. Income attributable to the recovery during the year of a bad debt, on account of which a deduction or credit was allowed for a prior taxable year, shall be included in gross income only to the extent that the deduction or credit resulted in a reduction of the tax imposed by this act for such prior year.*

**Sec. 4. Certain alimony payments to be reported for taxation.**—*Subdivision 1. Periodic payments to a wife who is divorced or separated from her husband by decree of divorce or separate maintenance, received subsequent to such decree in discharge of, or attributable to property transferred in trust or otherwise in discharge of, a legal obligation imposed on the husband by such decree or by written instrument incident to such divorce or separa-*

tion, shall be included in the gross income of the wife if she is a resident of the State of Minnesota.

*Subdivision 2. Amounts received by the wife who is a resident of the State of Minnesota from property transferred under the conditions set forth in subdivision 1 shall not be included in gross income of the husband, and amounts included in gross income of such wife shall be deductible from gross income of the husband except to the extent they are excluded from his gross income as provided in this subdivision.*

*Subdivision 3. This section shall not apply to that part of any periodic payment which is fixed by the decree or written instrument as payable for the support of minor children of the husband. To the extent of the amount so fixed, the entire amount of such payment, if less than the total amount payable, shall be considered as payable for the support of minor children.*

*Subdivision 4. Installment payments of lump sum obligations fixed in the decree or written instrument shall not be considered periodic payments under this section, unless the total amount is to be paid within a period ending more than 10 years from the date of the decree or instrument, and then only to the extent that installment payments received during the taxable year do not exceed 10 per cent of the total amount so fixed.*

*Subdivision 5. For purposes of this section the terms "wife" and "husband" shall include "former wife" and "former husband", respectively.*

**Sec. 5. Law amended.**—Mason's Supplement 1940, Section 2394-12, subdivision (a), is amended to read as follows:

(a) **Exemptions from gross income.**—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.*

**Sec. 6. Law amended.**—Mason's Supplement 1940, Section 2394-13, subdivision (c), is amended to read as follows:

(c) **Deductions from gross income.**—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 as-

essed; 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.

Sec. 7. **Law amended.**—Mason's Supplement 1940, Section 2394-13, subdivision (e), as amended by Laws 1941, Chapter 550, Section 7, is amended to read as follows:

(e) **Deductions from gross income.**—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.

Sec. 8. **Law amended.**—Mason's Supplement 1940, Section 2394-13, subdivision (k), is amended to read as follows:

(k) **Deductions from gross income.**—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 this subdivision.*

Sec. 9. **Law amended.**—Mason's Supplement 1940, Section 2394-19, as amended by Laws 1941, Chapter 550, Section 9, is amended to read as follows:

2394-19. **Basis for determining gain or loss from disposition of property acquired before January 1, 1933.**—The basis for determining the gain from the sale or other disposition of property acquired before January 1, 1933, *shall be the fair market value thereof on said date except that, if its cost to the taxpayer, adjusted as provided in Section 16 (b) for the period prior to January 1, 1933,* (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value). The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933, shall be the cost to the taxpayer adjusted as provided in Section 16 (b) for the period prior to January 1, 1933. The basis prescribed by Section 18 for determining gain or loss with respect to property acquired by gift, by gift through an *inter vivos* transfer in trust, by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purpose of this section.

**Sec. 10. Law amended.**—Mason's Supplement 1940, Section 2394-20, subdivision (b), as amended by Laws 1941, Chapter 550, Section 10, is amended to read as follows:

(b) **Deductions.**—Losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. For this purpose the term 'capital assets' shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in Section 13 (f) or amortization allowance provided in Section 13 (1), *or real property used in the trade or business of the taxpayer.*

**Sec. 11. Law amended.**—Mason's Supplement 1940, Section 2394-21, subdivisions (a) and (b) are hereby amended to read as follows:

(a) **Definitions.**—The term 'dividends' shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, out of its accumulated earnings or profits *or 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.

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

Sec. 12. **Law amended.**—Mason's Supplement 1940, Section 2394-28a, subsection (b), is amended to read as follows:

(b) **Estates or trusts—computation—credits—deductions.**—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 sub-section (c) of this section in the same or any succeeding taxable year.

Sec. 13. **Law amended.**—Mason's Supplement 1940, Section 2394-29, subdivision (b) is amended to read as follows:

(b) **Transferees and fiduciaries.**—The period of limitation for assessment *and collection* 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, *the tax may be assessed* within one year after the expiration of the period of limitation for assessment against the taxpayer, *and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the taxpayer.*

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, *the tax may be assessed 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 *and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the preceding transferee, but only if within four years after the expiration of the period of limitation for bringing an action against the taxpayer;* 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 assess-

ment of the liability of the transferee shall expire one year after the return of execution in the court proceeding, *and the period of limitation for collection by action shall expire one year after the said liability is assessed.*

(3) In the case of the liability of a fiduciary, *the tax may be assessed 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, and may be collected by action brought within one year after assessment.*

Sec. 14. **Law amended.**—Mason's Supplement 1940, Section 2394-33, is amended to read as follows:

2394-33. **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 if their gross income exceeds \$5000.

*Subdivision 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 aforesaid period exceeds \$1000.

(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 \$1000.

(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 \$1000, 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 \$1000.

(e) Every corporation with respect to its taxable net income if in excess of \$1000, or if its gross income exceeds \$5000. 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 30 taxable net income exceeds \$1000), or if such taxpayer's gross income exceeds \$5000.

Sec. 15. **Law amended.**—Mason's Supplement 1940, Section 2394-46, as amended by Laws 1941, Chapter 550, Section 17, is amended to read as follows:

2394-46. **Assessment of tax.**—(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 *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*.

(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 *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 subsection (b) shall not apply in the case of a corporation unless

(1) Such written request notifies 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.

(c) 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.

(d) If the taxpayer omits from gross income an amount properly *includible* 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 at any time within *4 four* years after the return was filed.

(e) For the purposes of *this section and of Mason's Supplement 1940, Section 2394-47, as amended*, a return filed before the last day prescribed by law for filing there of 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 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 commissioner and the taxpayer, pursuant to the provisions of subsection (h) hereof, or

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

(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 *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 subsection (a) 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. 16. **Law amended.**—Mason's Supplement 1940, Section 2394-47, as amended by Laws 1941, Chapter 550, Sections 18 and 22 are amended to read as follows:

2394-47. **Refundment of overpayment.**—(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 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 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 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 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.

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

**Sec. 17. Law amended.**—Mason's Supplement 1940, Section 2394-49, as amended by Laws 1941, Chapter 550, Section 19, is amended to read as follows:

2394-49. **Penalties.**—(a) 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 six 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 42(b) interest shall be paid at the rate of six 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.

(b) 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.*

(c) 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.

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

(e) 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. 18. **Law amended.**—Mason's Supplement 1940, Section 2394-50, is amended to read as follows:

“2394-50. **Administration and enforcement.**—The *commissioner* shall administer and enforce the assessment and collection of the taxes imposed by this act. *He* may, from time to time, make and publish such rules and regulations, in enforcing its provisions. *He* 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, or a gross income in excess of \$5,000 if it is derived solely from wages, salaries, dividends and interest, which statement may be verified by written declaration that it is made under the penalties of criminal liability for wilfully making a false return and which shall list 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 *commissioner*. The *commissioner* shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this act. The *commissioner* may prescribe rules and regulations governing the recognition of

agents, attorneys, or other persons representing claimants before the *commissioner*, 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 case. And such *commissioner* may, after due notice and opportunity for hearing, suspend and disbar from further practice before *him*; 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. 19. **Law amended.**—Subdivision 1. Mason's Supplement 1940, Section 2394-12-1, as amended by Laws 1941, Chapter 429, is amended to read as follows:

Sec. 12-1. **What are included in income taxes.**—The compensation received for services performed within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein, or a credit against the tax imposed on the income of residents of this state substantially similar in effect.

Subdivision 2. This section shall apply to the taxable year 1942 and subsequent years.

Sec. 20. **Definitions.**—Subdivision 1. The term "*withholding agent*" means any individual, fiduciary, corporation, association, or partnership, in whatever capacity acting, including all officers and employees of the state, or any political subdivision of the state, who is obligated to pay or has control of paying to any nonresident any salary, wages, bonuses, fees, commissions, or other compensation for personal services performed in this state.

Subdivision 2. Every withholding agent shall, except as hereinafter provided, deduct and withhold each month from the amount paid to any nonresident in the form of salary, wages,

bonuses, fees, commissions, or other compensation for personal services performed within this state the amounts shown in the following schedule:

Compensation paid during each month.	Amount to be withheld	Compensation paid during each month.	Amount to be withheld
\$ 0 to \$ 90	\$ -0-	\$250 to \$ 275	\$ 4.50
90 to 100	.20	275 to 300	5.45
100 to 110	.40	300 to 350	7.30
110 to 120	.60	350 to 400	9.60
120 to 125	.70	400 to 450	12.00
125 to 130	.80	450 to 500	14.85
130 to 140	.95	500 to 600	20.50
140 to 150	1.15	600 to 700	26.90
150 to 175	1.60	700 to 800	33.50
175 to 200	2.30	800 to 900	41.00
200 to 225	3.00	900 to 1,000	48.50
225 to 250	3.70	Over \$1,000	50.00

Subdivision 3. On or before the 15th day of January, April, July and October in each year, every withholding agent shall file with the commissioner of taxation a report, in such form as the commissioner may prescribe, accompanied by a remittance of all amounts withheld during the three month period ending on the last day of the month preceding the due date of the report, which amounts shall be deposited in a special fund described as "non-resident Income Tax Fund".

Subdivision 4. Upon the filing of an income tax return, as provided by law, by any nonresident from whose compensation an amount has been withheld as provided by this act, the commissioner shall determine the income tax due, and the penalty and interest if any, for the period covered by the return, and shall cause to be refunded from the Nonresident Income Tax Fund any amount withheld during said period in excess of the amount of the tax, penalty and interest. Interest upon such refund shall be computed from 90 days after the date the return is filed. The provisions of Mason's Supplement 1940, Sections 2394-43 and 2394-47, as amended by Laws 1941, Chapter 550, Sections 18 and 22, relating to the refundment of income taxes, shall be applicable unless otherwise specifically provided by this act. If no return is filed within one year after due date, no refund shall be made of any part of the amount withheld during the period for which the return should have been made.

Subdivision 5. If the commissioner determines that no income tax will be due on account of any compensation for services performed by a nonresident, he may authorize in writing the with-

holding agent to pay the full amount of such compensation without withholding any amount therefrom, or may cause to be refunded the amount withheld, either before or after it has been deposited in the Nonresident Income Tax Fund, without requiring an income tax return from such nonresident.

Subdivision 6. The commissioner of taxation shall cause to be transferred to the Income Tax School Fund, at least once in each year, from the Nonresident Income Tax Fund, (1) the amount of income taxes determined to be due from those nonresidents who have filed returns, to the extent of the amount withheld from their compensation and deposited in said Nonresident Income Tax Fund; (2) all amounts withheld from the compensation of nonresidents who have failed to file a return within one year after the due date thereof.

Subdivision 7. Every withholding agent who knowingly and wilfully fails to comply with the provisions of this act shall be liable for the amount of the tax due from any nonresident, to the extent of the amount the said agent has failed to withhold and remit as required by this act. Such liability shall be assessed and collected in the same manner and subject to the same limitations, as provided for incomes taxes.

Subdivision 8. This section shall take effect July 1, 1943.

Sec. 21. **Law amended**—Subdivision 1. Mason's Supplement 1940, Section 2394-12, as amended by Laws 1941, Chapter 18, Section 4, and by Laws 1941, Chapter 550, Sections 5 and 6, is amended by adding to the end thereof a new subsection to be known as (m) reading as follows:

(m) **Exemptions from gross income.**—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.

Subdivision 2. Mason's Supplement 1940, Section 2394-18, is amended by adding to the end thereof a new subsection to be known as (l), reading as follows:

(l) **Basis for determining gain or loss.**—Neither the basis nor the adjusted basis of any portion of real property shall, in the case of a lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludible from gross income under Section 2394-12 (m). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January

1, 1943, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

*Subdivision 3.* This section shall apply in computing taxes to all taxable years commencing after December 31, 1942.

**Sec. 22. What is income.**—Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income, and included in gross income for the taxable year in which received. If the taxpayer so elects, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the commissioner a change to a different method is authorized. This section shall apply to 1942 and subsequent taxable years.

**Sec. 23. Farm income.**—In the event any person engaged in the business of farming, whose return is filed on a cash basis, derives income from a sale of personal property made in the course of liquidating his business, the gain therefrom shall be computed by deducting from the gross sale price of each item or group of items sold, either the basis thereof as provided in Mason's Supplement 1940, Section 2394-18 and 2394-19, as amended, or, at the option of the taxpayer, 50 per cent of the gross sale price. This section shall apply to 1942 and subsequent taxable years.

**Sec. 24. Law amended.**—*Subdivision 1.* Mason's Supplement 1940, Sec. 2394-13, as amended by Laws 1941, Chapter 550, Section 7, is amended by adding the following new subsection to be known as subsection (m):

(m) **Income from discharge of indebtedness.**—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.

*Subdivision 3. This section shall apply to all taxable years commencing after December 31, 1941.*

**Sec. 25. Law amended.**—Mason's Minnesota Supplement 1940, Section 2394-13, as amended by Laws of 1941, Chapter 550, Section 7, is amended by adding at the end thereof a new subdivision reading as follows:

*(n) Deductions from gross income.*—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. 26. Re-negotiated contracts to be 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 affect 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 six months after the final determination in proceedings for renegotiation. 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. 27. **Law amended—exemptions.**—Subdivision 1. Mason's Supplement 1940, Section 2394-5, paragraph (1), is amended to read as follows:

*Any corporation, fund foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.*

Subdivision 2. Mason's Supplement 1940, Section 2394-5, paragraph (m) is amended to read as follows:

*The United States of America, the State of Minnesota or any political subdivision of either agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions.*

Sec. 28. **Law amended.**—Mason's Supplement 1940, Section 2394-27, Subdivision (b), is amended to read as follows:

(b) **Credits against tax.**—An amount for contributions or gifts made within the taxable year.

(1) *To or for the use of the United States of America, the State of Minnesota, or political subdivisions of either, for exclusively public purposes.*

(2) *To or for the use of any community chest, corporation, organization, trust, fund, association, or foundation operating within this state, organized and operating exclusively for religious, charitable, scientific, literary, artistic or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.*

(3) *To or for the use of any community chest, corporation, trust, fund, association, or foundation, organized and operated exclusively for any of the purposes specified in Paragraph (2) of this subdivision, and organized and existing under the laws of a state, the laws of which either do not impose a tax on net income, or allow a credit or deduction in computing such tax for contributions and gifts to similar organizations organized and ex-*

isting under the laws of this state, or provide for such a credit or deduction under reciprocal provisions and existing under the laws of this state, or provide for such a credit or deduction under reciprocal provisions.

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

(5) The total credit against net income hereunder shall not exceed 15 per cent of the taxpayer's taxable net income.

**Sec. 29. Law amended.**—Mason's Supplement 1940, Section 2394-57, as amended by Laws 1941, Chapter 445, and by Laws 1943, Chapter \*, is amended by adding a new subsection being as follows:

(h) **Distribution to school districts.**—*Out of the balance in said income tax school fund, after distributing the amounts hereinbefore provided, there shall be distributed to each school district in the state an amount equal to the tax on the money and credits in said school district for the year 1942, which was apportioned to and received by it in 1943, as provided by Mason's Minnesota Statutes of 1927, Section 2349. Such distribution shall be semi-annually during the calendar years 1944 and 1945, and thereafter this sub-section shall have no force and effect.*

**Sec. 30. Tax on money and credits suspended.**—*Subdivision 1. Money and credits, as defined in Mason's Supplement 1940, Section 2337, as amended by Laws 1943, Chapter \*\*, are hereby exempted from taxation, for the years 1943 and 1944. No returns for said years shall be required, and no assessment thereof shall be made.*

*Subdivision 2. The exemption provided by this section shall not affect or prevent the assessment, levy, or collection of taxes on money and credits for any year or years prior to 1943.*

*Subdivision 3. Mason's Minnesota Statutes of 1927, section 1936, is amended to read as follows:*

*1936. The words "assessed value" as used herein shall mean the latest valuation for purposes of taxation, as finally equalized, of all property taxable within the municipality referred to, including therein the valuation of money and credits, as defined in*

\*630 \*\*596. (Explanatory: These numbers were omitted in the original law. They are supplied here for convenience.)

*Mason's Supplement 1940, Section 2337, as amended, as assessed and equalized for the year 1942.*

Subdivision 4. *The exemption provided by this section shall not preclude the taking of money and credits into account in determining the assessed value of property within any city of any class, any village, borough, county, town or school district, for purpose of computing the limit of indebtedness prescribed by any general law or by the special law or home rule charter under which it is organized, and the property so exempted shall for these purposes be taken into account at its assessed value as finally equalized for the year 1942.*

Subdivision 5. *The exemption provided by this section shall not preclude the taking of money and credits into account in determining the assessed value of property within any city of any class, any village, borough, county, town, or school district, in classifying such city, village, borough, county, town or school district; under any law of this state, for the purpose of determining salaries of public officers, or for any other purpose, and the property so exempted shall for such purposes be taken into account at its assessed value as finally equalized for the year 1942.*

Subdivision 6. *This section shall take effect upon the passage of this act and shall have no force and effect after April 30, 1945.*

**Sec. 31. Application of act.**—*This act shall apply to taxable years beginning after December 31, 1942, except as herein otherwise expressly provided, and except as follows:*

*Section 1. shall apply to taxable years ending in 1939 and subsequent years; Section 9 shall apply to taxable years ending during 1941 and subsequent years; Sections 13 and 15 shall apply to all existing liabilities; Section 16, insofar as it amends Section 2394-47(a), shall apply, except as expressly provided therein, to claims filed after the passage of this act; Section 17 shall apply to all assessments hereafter made.*

Approved April 24, 1943.

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CHAPTER 657—H. F. No. 1414

(AMENDING SECTION 298.09 MINNESOTA STATUTES 1941.)

*An act relating to taxes imposed on the occupation of mining, amending Mason's Minnesota Statutes of 1927, Section 2383.*