

## CHAPTER 769—H. F. No. 1653

*An act relating to taxes on and measured by net income; amending Minnesota Statutes 1953, Section 290.01, Subdivision 21, as amended; Section 290.095, Subdivision 4; Section 290.16, Subdivision 3, as amended and Subdivisions 4, 5 and 6; and Section 290.18, Subdivision 2, as amended; repealing Minnesota Statutes 1953, Section 290.16, Subdivision 2.*

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

Section 1. Minnesota Statutes 1953, Section 290.01, Subdivision 21, as amended by Laws 1955, Chapter 385, is amended to read:

Subd. 21. **Dividends.** (1) The term "dividends" means any distribution made by a corporation to its shareholders, whether in money or in other property, (a) out of its earnings or profits accumulated after December 31, 1932, or (b) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. Dividends paid in property other than cash shall be included in the recipient's income at the fair market value of such property on the date the action ordering their distribution was taken, or if no such action was taken, on the date of the actual payment or credit thereof to the shareholder.

(2) For the purposes of this section every distribution is presumed to be made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of tangible property with situs in Minnesota, accrued, before January 1, 1933, may be distributed exempt from tax, after the earnings and profits accumulated after December 31, 1932, have been distributed, but any such tax-free distribution shall be applied against and reduce the cost or other income tax basis of the stock with respect to which such distribution is made. If such or any similar tax-free distributions exceed such cost or other income tax basis, any excess shall be treated in the same manner as a gain from the sale or exchange of property for the taxable year in which received by the distributee.

(3) A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the

Sixteenth Amendment to the Constitution of the United States. Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (a) in its stock or in rights to acquire its stock or (b) in money or any other property (including its stock or rights to acquire its stock) then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid. If a corporation cancels or redeems its stock, whether or not such stock was issued as a stock dividend, at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in cancellation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits.

(4) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under section 290.12, but shall be recognized only to the extent provided in section 290.13, and shall be taken into account in computing *gross income and net income* only to the extent provided in section 290.16, subdivision 2. No amounts received in liquidation shall be taxed as a gain until the distributee shall have received in liquidation an amount in excess of the applicable loss or gain basis of the stock in respect of which the distribution is received, and any such excess shall be taxed as gain in the year in which received. No amount received in liquidation shall be treated as the distribution of an ordinary dividend.

(5) Amounts distributed by a regulated investment company, as that term is defined and limited by section 851 of the Internal Revenue Code of 1954, which are designated as capital gain dividends, as that term is defined in section 852 (b) (3) (C) of the Internal Revenue Code of 1954, shall be treated by the shareholders of such a company as gains from the sale or exchange of capital assets held for more than six months and shall be taken into account in computing net income only to the extent provided in section 290.16, subdivision 2.

Sec. 2. Minnesota Statutes 1953, Section 290.095, Subdivision 4, is amended to read:

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

(a) Deductions otherwise allowable in computing tax-

able net income, but which are not attributable to the operation of a trade or business regularly carried on by the taxpayer, shall be allowed only to the extent of the gross income, not derived from such trade or business, included in computing such taxpayer's taxable net income. For the purpose of this paragraph, deductions and gross income shall be computed with the exceptions, additions and limitations provided in paragraphs (4) (b), (d), (e), (f), (g) and (h) of this subdivision.

(b) There shall be included in computing the gross income used in computing taxable net income the amount of the interest, excludible from gross income under section 290.08, that would be treated as assignable to this state, decreased by the amount of interest paid or accrued to purchase or carry the investments earning such interest to the extent that such interest would not have been deductible in computing the taxpayer's taxable net income.

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

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

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

(f) *The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets. The deduction for long-term capital gains provided by section 290.16, subdivision 4, shall not be allowed.*

(g) Renegotiation of profits for a prior taxable year under the renegotiation laws of the United States of America,

including renegotiation of the profits with a subcontractor, shall not enter into the computation of a net operating loss.

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

Sec. 3. Minnesota Statutes 1953, Section 290.16, Subdivision 3, as amended by Laws 1955, Chapter 166, is amended to read:

Subd. 3. **Definitions.** As used in this section

(1) The term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include

(a) 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

(b) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 290.09, clause (6), or amortization allowance provided in section 290.09, clause (12), or real property used in the trade or business of the taxpayer, or

(c) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in subparagraph (a);

(2) The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than six months, if and to the extent such gain is taken into account in computing *gross* income;

(3) The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than six months, if and to the extent such loss is taken into account in computing net income;

(4) The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than six months, if and to the extent such gain is taken into account in computing *gross* income;

(5) The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than six months, if and to the extent such loss is taken into account in computing net income;

(6) The term "net short-term capital gain" means the

excess of short-term capital gains for the taxable year over the short-term capital losses for such year;

(7) The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

(8) The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

(9) The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(10) The term "net capital gain" means the excess of (i) the sum of the gains from the sales or exchanges of capital assets, plus net income of the taxpayer or \$1,000, whichever is smaller, over (ii) the losses from such sales or exchanges. For this purpose, net income shall be computed without regard to gains or losses from sales or exchanges of capital assets.

(11) The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under subdivision 5. For the purpose of determining losses under this paragraph, amounts which are short-term capital losses under subdivision 6 shall be excluded.

Sec. 4. Minnesota Statutes 1953, Section 290.16, Subdivision 4, is amended to read:

*Subd. 4. Percentage limitations. If for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 per cent of the amount of such excess shall be a deduction from gross income. In the case of an estate or trust the deduction shall be computed by excluding the portion (if any), of the gains for the taxable year from sales or exchanges of capital assets, which, under section 290.23 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.*

Sec. 5. Minnesota Statutes 1953, Section 290.16, Subdivision 5, is amended to read:

**Subd. 5. Limitations of losses.** Losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus the net income of the taxpayer, or \$1,000, whichever is smaller. For purposes of this paragraph, net income shall be computed

without regard to gains or losses from sales or exchanges of capital assets.

Sec. 6. Minnesota Statutes 1953, Section 290.16, Subdivision 6, is amended to read:

Subd. 6. **Net capital loss carry-over.** If for any taxable year beginning after December 31, 1956, the taxpayer has a net capital loss, the amount thereof shall be a short-term capital loss in each of the *five* succeeding taxable years to the extent that such amount exceeds the total of any net capital gains of any taxable years intervening between the taxable year in which the net capital loss arose and such succeeding taxable year. For purposes of this paragraph a net capital gain shall be computed without regard to such net capital loss or to any net capital losses arising in any such intervening taxable years.

Sec. 7. Minnesota Statutes 1953, Section 290.18, Subdivision 2, as amended by Laws 1955, Chapter 170, is amended to read:

Subd. 2. **Adjusted gross income.** The adjusted gross income shall, except in so far as section 290.19 is applicable, be computed by deducting from the gross income assignable to this state under section 290.17, the following deductions:

(1) The deductions allowed by sections 290.09, 290.075 and 290.077 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) The deductions allowed by section 290.09 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(3) The deductions allowed by section 290.09, which consist of expenses paid or incurred by the taxpayer in connection with the performance by him of services as an employee under a reimbursement or other expense allowance arrangement with his employer;

(4) The deductions allowed by section 290.09 which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(5) The deductions allowed by section 290.09 which are attributable to a trade or business carried on by the tax-

payer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer;

(6) The deductions (other than those provided in paragraphs 1, 8 and 9) allowed by sections 290.09 and 290.077 which are attributable to property held for the production of rents or royalties;

(7) The deductions (other than those provided in paragraph (1)) for depreciation and depletion allowed by section 290.09 (6) and (7) to a life tenant of property or to an income beneficiary of property held in trust;

(8) The deductions (other than those provided in paragraph (1)) allowed by sections 290.09, 290.16, subdivision 5, as losses from the sale or exchange of property;

(9) allowable federal income taxes determined under the provisions of sections 290.09 (3), 290.10 (9) and 290.18;

(10) *The deductions allowed by section 290.16, subdivision 3, relating to long-term capital gains.*

The deductions enumerated in this subdivision shall be allowed to the extent provided in subdivision 1 of this section.

**Sec. 8. Repealer.** Minnesota Statutes 1953, Section 290.16, Subdivision 2, is hereby repealed.

**Sec. 9.** *The provisions of this act are applicable to all taxable years beginning after December 31, 1956.*

Approved April 27, 1957.

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#### CHAPTER 770—H. F. No. 1655

*An act relating to the board of tax appeals permitting any member of the board of tax appeals to extend the time within which the commissioner of taxation shall file his return and answer, amending Minnesota Statutes 1953, Section 271.06, Subdivision 3.*

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

Section 1. Minnesota Statutes 1953, Section 271.06, Subdivision 3 is amended to read:

**271.06 Appeals from orders.** Subd. 3. **Pleadings.** Within 20 days after the service and filing of the notice of