

the electors, in which event the question of making such pledge shall likewise be submitted to the electors at a general or special election, either separate from or combined with the question of issuing the bonds. When the question of making such pledge has been so submitted, it shall be deemed to have carried if approved by a majority of the electors voting on the question.

Approved April 29, 1957.

CHAPTER 846—H. F. No. 1337

An act relating to taxes on and measured by net income; amending Minnesota Statutes 1953, Section 290.25.

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

Section 1. Minnesota Statutes 1953, Section 290.25, is amended to read:

290.25 Estates and trusts, rule if taxable year of beneficiary is different. *Subdivision 1. Where it is specified in this section and sections 290.27 and 290.28 that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable net income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable net income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to section 290.23. No items of a trust shall be included in computing the taxable net income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 290.01, subdivision 20 (relating to definition of gross income) or any other provision of this chapter, except as specified in this section and sections 290.27 and 290.28.*

Subd. 2. (1) For purposes of this section and sections 290.27 and 290.28, the term "adverse party" means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(2) For purposes of this section and sections 290.27

and 290.28, the term "nonadverse party" means any person who is not an adverse party.

(3) For purposes of this section and sections 290.27 and 290.28, the term "related or subordinate party" means any nonadverse party who is

(a) the grantor's spouse if living with the grantor;

(b) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation of any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subdivision 4 and 5, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or non-exercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(4) A person shall be considered to have a power described in this section and sections 290.27 and 290.28 even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power.

Subd. 3. (1) The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust.

(2) Paragraph (1) shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of the trust, irrevocably payable for a period of at least 2 years (commencing with the date of the transfer) to a designated beneficiary, which beneficiary is an organization exempt from taxation under the provisions of section 290.05 and is one of the following:

(a) a church or a convention or association of churches,
or

(b) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance

at the place where its educational activities are regularly carried on, or

(c) an organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research or agricultural research.

(3) The grantor shall not be treated under paragraph (1) as the owner of any portion of a trust where his reversionary interest in such portion is not to take effect in possession or enjoyment until the death of the person or persons to whom the income therefrom is payable.

(4) Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effected and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

Subd. 4. (1) The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(2) Paragraph (1) shall not apply to the following powers regardless of by whom held:

(a) A power described in section 290.28, subdivision 1 (4) to the extent that the grantor would not be subject to tax under that section.

(b) A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under subdivision 3 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(c) A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the

grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(d) A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 290.21 (2) (relating to charitable contributions).

(e) A power to distribute corpus either (1) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or (2) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this subparagraph (e) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(f) A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable (1) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or (2) on termination of the trust, or in conjunction with a distribution of corpus which augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this subparagraph (f) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(g) A power exercisable only during (1) the existence of a legal disability of any current income beneficiary, or (2) the period during which any income beneficiary shall be under the age of 21 years.

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this subparagraph (g) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(h) A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(3) Paragraph (1) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor

(a) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class or beneficiaries; or

(b) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this paragraph (3) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(4) Paragraph (1) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (2) (f) or (g) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

Subd. 5. The grantor shall be treated as the owner of any portion of a trust in respect of which

(1) *A power exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.*

(2) *A power exercisable by the grantor or a nonadverse party; or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.*

(3) *The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor.*

(4) *A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one of more of the following powers: (a) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (b) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (c) a power to reacquire the trust corpus by substituting other property of an equivalent value.*

Sec. 2. The provisions of this chapter are applicable to all taxable years beginning after December 31, 1956.

Approved April 29, 1957.
