

CHAPTER 8009
DEPARTMENT OF REVENUE
INCOME TAX
DEDUCTIONS

DEPENDENT EDUCATION EXPENSE			
8009.3000	SCHOOL TUITION AND TRANSPORTATION. CARRYBACKS	8009.7200 8009.7300	ALLOWANCE OF ADJUSTMENTS. SPECIAL PERIOD OF LIMITATIONS WITH RESPECT TO NET OPERATING LOSS CARRYBACKS.
8009.7100	COMPUTATION OF TENTATIVE CARRYBACK ADJUSTMENT.	8009.7400	AUDIT AND REVIEW.

8009.0100 [Repealed, L 1987 c 268 art 1 s 128]**8009.0200** [Repealed, L 1987 c 268 art 1 s 128]**8009.0300** [Repealed, L 1987 c 268 art 1 s 128]**8009.0400** [Repealed, L 1987 c 268 art 1 s 128]**8009.0500** [Repealed, L 1987 c 268 art 1 s 128]**8009.0600** [Repealed, L 1987 c 268 art 1 s 128]**8009.0700** [Repealed, L 1987 c 268 art 1 s 128]**8009.0800** [Repealed, L 1987 c 268 art 1 s 128]**8009.0900** [Repealed, L 1987 c 268 art 1 s 128]**8009.1000** [Repealed, L 1987 c 268 art 1 s 128]**8009.1100** [Repealed, L 1987 c 268 art 1 s 128]**8009.1200** [Repealed, L 1987 c 268 art 1 s 128]**8009.1300** [Repealed, L 1987 c 268 art 1 s 128]**8009.1400** [Repealed, L 1987 c 268 art 1 s 128]**8009.1500** [Repealed, L 1987 c 268 art 1 s 128]**8009.1600** [Repealed, L 1987 c 268 art 1 s 128]**8009.1700** [Repealed, L 1987 c 268 art 1 s 128]**8009.1800** [Repealed, L 1987 c 268 art 1 s 128]**8009.1900** [Repealed, L 1987 c 268 art 1 s 128]**8009.2000** [Repealed, L 1987 c 268 art 1 s 128]**8009.2100** [Repealed, L 1987 c 268 art 1 s 128]**8009.2200** [Repealed, L 1987 c 268 art 1 s 128]**8009.2300** [Repealed, L 1987 c 268 art 1 s 128]**8009.2400** [Repealed, L 1987 c 268 art 1 s 128]**8009.2500** [Repealed, L 1987 c 268 art 1 s 128]**8009.2600** [Repealed, L 1987 c 268 art 1 s 128]**8009.2700** [Repealed, L 1987 c 268 art 1 s 128]**DEPENDENT EDUCATION EXPENSE****8009.3000 SCHOOL TUITION AND TRANSPORTATION.**

Subpart 1. **In general.** Subject to the following conditions, a deduction from gross income is allowed for amounts the taxpayer has paid to others during the taxable year for a de-

pendent's tuition and the cost of transportation in attending an elementary or secondary school.

Subp. 2. Elementary or secondary school. The dependent (as defined below) must have been enrolled in an elementary or secondary school at the time the tuition expense or cost of transportation was incurred. An "elementary or secondary school" is defined as:

A. a kindergarten, grade, or high school in the Minnesota public school system; or

B. a school which is part of another public school system or which is nonpublic, provided that such school is equivalent to one of the schools referred to in item A, in both purpose and scope of instruction given. (But see subpart 3 regarding schools for the mentally retarded or physically impaired.)

Limitation: The term "elementary or secondary school" does not include prekindergarten or post high school graduation grades.

Subp. 3. Mentally retarded or physically impaired dependent. If the dependent is mentally retarded or physically impaired, the cost of tuition and transportation of such dependent in receiving instruction in courses similar in content to courses taught in elementary or secondary schools for normal children is deductible.

However, the cost of tuition and transportation expenses incurred to give such dependent other instruction, therapy, or medical care is not deductible under Minnesota Statutes, section 290.09, subdivision 22. Any amounts deducted under Minnesota Statutes, section 290.09, subdivision 10 cannot also be deducted under Minnesota Statutes, section 290.09, subdivision 22.

Subp. 4. Dependent defined. A dependent for the purposes of this rule is the same as a dependent for the purposes of Minnesota Statutes, section 290.06, subdivision 3, clause (3). See 2006 (3) (b).

Subp. 5. In attending an elementary or secondary school defined. For purposes of this rule, "in attending an elementary or secondary school" means:

A. physically attending an elementary or secondary school;

B. receiving instruction given by an elementary or secondary school to students who are unable to physically attend classes conducted at such school; or

C. receiving instruction from a private teacher or school which is not an elementary or secondary school, provided that such instruction was acceptable for credit by the elementary or secondary school in which the dependent was enrolled.

Subp. 6. Supplementary instruction. No deduction is allowed for tuition or the cost of transportation paid to have a dependent receive instruction which is merely supplementary to class work taken by the dependent in an elementary or secondary school. Example: The taxpayer hires a private tutor to assist the taxpayer's child to receive a passing grade in the child's high school history class. Expenditures made to receive such instruction from the tutor are not deductible.

Subp. 7. Extracurricular activities. Amounts paid for the purpose of having the dependent attend extracurricular school activities such as sporting events, concerts, plays, dances, etc., are not deductible.

Subp. 8. Tuition. "Tuition" is defined as the charge made by an educational institution or individual to compensate such institution or individual for instruction given or to be given to the dependent. Thus, tuition does not include charges made to compensate for feeding, lodging, or clothing of the dependent, nor does it include separate charges for the purchase or use of books, supplies, or equipment.

Subp. 9. Cost of transportation. Unreimbursed amounts actually paid to a person or organization which provided the dependent with transportation in attending an elementary or secondary school are deductible. However, no deduction is permitted for any expense the taxpayer incurred in using the taxpayer's own car to provide such transportation for a dependent.

Subp. 10. Limit on deduction. The maximum amount a taxpayer may deduct for tuition and the cost of transportation for an individual dependent is limited to \$200. If the amounts paid for an individual dependent total less than \$200, the deduction with respect to such individual dependent is the total amount actually paid for such dependent.

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Subp. 11. Statement to be included in return. The taxpayer must maintain a record or memorandum sufficient to substantiate the amounts claimed as tuition and transportation costs. A mere estimate of the amounts is not acceptable.

A statement must be included in the return listing, under the name of each dependent for whom the taxpayer paid tuition or transportation expenses, the following information:

- A. the amount paid for dependent's tuition and to whom paid; and
- B. the amount paid for the dependent's transportation and to whom paid.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8009.4000 [Repealed, L 1987 c 268 art 1 s 128]

8009.4100 [Repealed, L 1987 c 268 art 1 s 128]

8009.4200 [Repealed, L 1987 c 268 art 1 s 128]

8009.4300 [Repealed, L 1987 c 268 art 1 s 128]

8009.4400 [Repealed, L 1987 c 268 art 1 s 128]

8009.4500 [Repealed, L 1987 c 268 art 1 s 128]

8009.4600 [Repealed, L 1987 c 268 art 1 s 128]

8009.4700 [Repealed, L 1987 c 268 art 1 s 128]

8009.4800 [Repealed, L 1987 c 268 art 1 s 128]

8009.4900 [Repealed, L 1987 c 268 art 1 s 128]

8009.5000 [Repealed, L 1987 c 268 art 1 s 128]

8009.5100 [Repealed, L 1987 c 268 art 1 s 128]

8009.5200 [Repealed, L 1987 c 268 art 1 s 128]

8009.5300 [Repealed, L 1987 c 268 art 1 s 128]

8009.5400 [Repealed, L 1987 c 268 art 1 s 128]

8009.5500 [Repealed, L 1987 c 268 art 1 s 128]

8009.5600 [Repealed, L 1987 c 268 art 1 s 128]

8009.5700 [Repealed, L 1987 c 268 art 1 s 128]

8009.5800 [Repealed, L 1987 c 268 art 1 s 128]

8009.5900 [Repealed, L 1987 c 268 art 1 s 128]

8009.6500 [Repealed, L 1987 c 268 art 1 s 128]

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8009.7000 [Repealed, L 1987 c 268 art 1 s 128]

8009.7100 COMPUTATION OF TENTATIVE CARRYBACK ADJUSTMENT.

Subpart 1. Tax previously determined. The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss. Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, refunded, or otherwise repaid prior to such date. Any items as to which the Department of Revenue and the taxpayer are in disagreement at the time of filing of the application shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return.

or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application.

Subp. 2. Decrease attributable to carryback. The decrease in tax previously determined which is affected by the carryback or any related adjustments, is to be determined, except for such carryback and related adjustments, on the basis of the items which entered into the computation of such tax as previously determined; the tax previously determined being ascertained in the manner described in this part. In determining any such decrease, items shall be taken into account only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, refunded, or otherwise repaid, before the date of filing the application for a tentative carryback adjustment. If the Department of Revenue and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the decrease in tax previously determined that such item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, refund, or other repayment, before the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of \$50,000 for salaries paid to its officers, but the commissioner asserts that such deduction should not exceed \$20,000, and the Department of Revenue and the taxpayer have not agreed on the amount properly deductible before the date the application for a tentative carryback adjustment is filed, \$50,000 shall be considered as the amount properly deductible, for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items, which are affected by the carryback must be adjusted to reflect such carryback.

Statutory Authority: MS s 290.52

8009.7200 ALLOWANCE OF ADJUSTMENTS.

Subpart 1. Time prescribed. The commissioner shall act upon any application for a tentative carryback adjustment filed, under Minnesota Statutes, section 290.095, subdivision 7 within a period of 90 days from whichever of the following two dates is the later:

A. the date the application is filed; or

B. the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which the carryback results.

Subp. 2. Examination. Within the 90-day period described in subpart 1, the commissioner shall make to the extent the commissioner deems practicable in such period, an examination of the application to discover omissions and errors of computation. The commissioner shall determine within such period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and such examination. The commissioner, however, may correct any errors of computation or omissions he or she may discover upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, the commissioner accordingly may correct any mathematical error appearing on the application and may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing its net operating loss, the resulting carrybacks, or its net operating loss deduction. If the required modification has not been made by the taxpayer and the commissioner has available the necessary information to make such modification within the 90-day period, the commissioner may in his or her discretion, make such modification. In determining such decrease, however, the commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because of the belief that the taxpayer has claimed an excessive amount; likewise the commissioner will not include in gross income any amount not so included by the taxpayer, even though the commissioner believes that such amount is subject to tax and properly should be included in gross income.

Subp. 3. Disallowance in whole or in part. If the commissioner finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, the commissioner may disallow such application in whole or in part without further ac-

tion. If, however, the commissioner deems that any error of computation can be corrected within the 90-day period, the commissioner may do so and allow the application in whole or in part. The commissioner's determination as to whether he or she can correct any error of computation within the 90-day period shall be conclusive. Similarly, the action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer in such case, however, may file a claim for credit or refund under Minnesota Statutes, section 290.50, and may maintain a suit based on such claim if it is disallowed or if the commissioner does not act upon the claim within six months from the date it is filed.

Subp. 4. Application of decrease. Each decrease determined by the commissioner in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount of tax may include one or more of the following:

- A. an amount with respect to which the taxpayer is delinquent; and
- B. an amount the time for payment of which has been extended under Minnesota Statutes, section 290.45, subdivision 2 and which is due and payable on or after the date of the allowance of the decrease.

Subp. 5. Action by commissioner. In case the unpaid amount of tax includes more than one of such amounts, the commissioner, in the commissioner's discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in subpart 4 in the order named. The unpaid amount of tax against which a decrease may be applied under subpart 4 may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, the commissioner will credit any remainder of the decrease against any unsatisfied amount of tax for the taxable year of the net operating loss, which resulted in the carryback.

Any remainder of the decrease after such application and credits may, within the 90-day period, in the discretion of the commissioner, be credited against any tax or installment thereof then due from the taxpayer, and if not so credited, shall be refunded to the taxpayer within such 90-day period. For the purposes of refunding any such decrease or portion thereof, the overpayment of tax resulting from the carryback for purposes of this part shall be deemed not to have been made prior to the end of the taxable year, in which the net operating loss occurs.

Statutory Authority: MS s 290.52

History: 17 SR 1279

8009.7300 SPECIAL PERIOD OF LIMITATIONS WITH RESPECT TO NET OPERATING LOSS CARRYBACKS.

Subpart 1. Refund claims; time periods, amount limits, barred claims. Refund claims; time periods, amount limits, and barred claims are as follows:

A. If the claim for refund relates to an overpayment of income tax attributable to a net operating loss carryback, provided in Minnesota Statutes, section 290.095, subdivision 2, then in lieu of the period prescribed in Minnesota Statutes, section 290.50, the claim may be filed, or refund allowed, as prescribed in Minnesota Statutes, section 290.46 or 290.50 within either of the following two periods whichever is the later:

(1) the period which ends with the expiration of the 15th day of the 45th month following the end of the taxable year of the net operating loss which resulted in the carryback; or

(2) the period which ends with the expiration of the period prescribed in Minnesota Statutes, section 290.46 or 290.50 within which a claim for refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback.

B. In the case of a claim for refund involving a net operating loss carryback described in item A, the amount of the refund may exceed the portion of the tax paid within the period provided in Minnesota Statutes, section 290.50 to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on a net operating loss carryback described in item A but based also on other items, the refund cannot exceed the sum of the following:

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(1) the amount of the overpayment which is attributable to the net operating loss carryback; and

(2) the balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in Minnesota Statutes, section 290.50 or within the period provided in any other applicable provisions of law.

C. If the claim involves an overpayment based not only on a net operating loss carryback described in item A but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for refund is not filed, and if refund is not allowed, within the period prescribed in this paragraph, then refund may be allowed or made only if claim therefor is filed, or if such refund is allowed, within the period prescribed in Minnesota Statutes, section 290.46 or 290.50 subject to the provisions thereof limiting the amount of refund in the case of a claim filed, or if no claim was filed, in case of refund allowed, within such applicable period.

Subp. 2. **Court determinations.** If the allowance of a refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law such refund may be allowed or made under the provisions of Minnesota Statutes, section 290.095, subdivision 7, paragraph (c) if a claim therefor is filed within the period therein provided and subpart 1 for filing a claim for refund of an overpayment attributable to a carryback. Similarly, if the allowance of an application, or refund of a decrease in tax determined under Minnesota Statutes, section 290.095, subdivision 7, paragraph (b) is otherwise prevented by the operation of any law or rule of law, such application, or refund may be allowed or made if an application for a tentative carryback adjustment is filed within the period provided in Minnesota Statutes, section 290.095, subdivision 7, paragraph (a). Thus, for example, even though the tax liability (not including the net operating loss deduction or the effect of such deduction) for a given taxable year has previously been litigated before the Tax Court of Appeals, refund or an overpayment may be allowed or made if claim for such refund is filed within the period provided in Minnesota Statutes, section 290.095, subdivision 7, paragraph (c) and subpart 1. In the case of a claim for refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Tax Court of Appeals, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

Statutory Authority: MS s 290.52

8009.7400 AUDIT AND REVIEW.

The commissioner in examining the books and records of the taxpayer relating to the income tax return for a taxable year, which except for the provisions of Minnesota Statutes, section 290.095, subdivision 7, paragraph (c) would be outlawed by the normal limitation period, will limit such examination and consideration in accordance with the provisions of this rule. The procedure outlined will be followed with respect to such returns in cases where either a claim for refund has been filed by the taxpayer or where an application for a tentative carryback adjustment has been filed. The commissioner will make appropriate adjustments as a result of such examination up to the amount of the tentative adjustment or the amount of the carryback but will in no event assess additional taxes for the year of carryback.

In the event that such examination discloses that the amount refunded to the taxpayer pursuant to application under Minnesota Statutes, section 290.095, subdivision 7, paragraph (a) was improper, the commissioner shall issue an order assessing a tax which assessment shall in no event exceed the amount of the erroneous refund made for the year in question. Such assessment shall be made in accordance with the provisions of Minnesota Statutes, section 290.46, and the provisions of Minnesota Statutes, chapter 290, dealing with notice, appeal, and collection, applicable to Minnesota Statutes, section 290.46 assessments shall be equally applicable to assessments under this part.

Statutory Authority: MS s 290.52

History: 17 SR 1279