

CHAPTER 8001
DEPARTMENT OF REVENUE
INCOME TAX DIVISION
TAX DEFINITIONS

8001.0100 PARTNERSHIP AND PARTNER.
 8001.0200 CORPORATION DEFINED.
 8001.0300 RESIDENT AND DOMICILE
 DEFINED; CONSIDERATIONS.
 8001.0400 FIDUCIARY DEFINED.

8001.0500 GROSS INCOME.
 8001.0600 DIVIDENDS.
 8001.0700 TAXABLE NET INCOME.
 8001.9000 INCORPORATION BY REFERENCE
 OF INTERNAL REVENUE CODE.

8001.0100 PARTNERSHIP AND PARTNER.

Subpart 1. **Partnership.** The term "partnership" includes the following:

- A. syndicates;
- B. groups;
- C. pools;
- D. joint ventures; and

E. other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on and which is not, within the meaning of this act, a trust, estate, or corporation.

Subp. 2. **Partner.** The term "partner" includes a member in such a syndicate, group, pool, joint venture, or unincorporated organization.

Some of the characteristics which must be present in a partnership are enumerated as follows:

- A. an agreement between two or more parties to engage in a specific business or undertaking;
- B. an investment by each partner of capital or services, or both;
- C. a mutual right to contract debts in the name of the partnership;
- D. a mutual liability to the debts contracted;
- E. a right to an annual accounting and division of the profits or losses;

and

F. a termination of the partnership upon the death of a partner or upon a change in the ownership of a participating interest.

Subp. 3. **Certain property interests not necessarily a partnership.** Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or a part ownership does not of itself establish a partnership whether such co-owners do or do not share any profits made by the use of the property. The sharing of gross returns does not of itself establish a partnership whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

Subp. 4. **When partnership form taxed as corporation.** An organization which is in form a partnership may be considered an association taxable as a corporation if:

- A. it is not interrupted by the death of a member or change in the ownership of a participating interest during the agreed period of its existence; and
- B. its management is centralized in one or more persons in their representative capacities.

Statutory Authority: *MS s 290.52*

8001.0200 CORPORATION DEFINED.

Subpart 1. **In general.** The term "corporation" includes joint stock compa-

nies and corporations existing under the laws of any state or country; certain partnerships; associations (other than ordinary partnerships); and common law trusts organized or conducted for profit.

Subp. 2. Certain partnerships classified as corporations. An organization which is in form a partnership may be considered an association taxable as a corporation if:

A. it is not interrupted by the death of a member or change in the ownership of a participating interest during the agreed period of its existence; and

B. its management is centralized in one or more persons in their representative capacities.

If a partnership is classified as a "corporation," the income received by the members from the earnings of such partnership will be treated in their personal returns in the same manner as dividends from corporations.

Subp. 3. Limited partnerships. For all taxable years beginning with and subsequent to 1939, a limited partnership is classified for the purpose of this act as an ordinary partnership, or, on the other hand, as an association taxable as a corporation, depending upon its character in certain material respects. If the organization is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and if the management of its affairs is centralized in one or more persons acting in a representative capacity, it is taxable as a corporation. For want of these essential characteristics, a limited partnership is to be considered as an ordinary partnership, notwithstanding other characteristics conferred upon it by local law.

Subp. 4. Certain trusts classified as corporations. In cases where trustees hold property for the collection of the income and its distribution among the beneficiaries of the trust, the trust is not classified as a "corporation." Where the trustees are not restricted to the mere collection of funds and their payment to the beneficiaries but possess powers similar to those exercised by the directors in a corporation for the purpose of carrying on a business enterprise, the trust is classified as a "corporation." The distinction is that between the activity or purpose for which an ordinary, strict trust of the traditional type would be created and the activity or purpose for which a corporation for profit might have been formed.

Statutory Authority: *MS s 290.52*

8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.

Subpart 1. Resident. The term "resident" means any individual person maintaining a home in Minnesota during any part of a tax year who is, during that part of such year, domiciled in Minnesota.

Subp. 2. Domicile; definition and presumptions. The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home. The domicile of any person shall be that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile. But if a person moves to another jurisdiction with the intention of remaining there permanently or for an indefinite time as a home, that person shall have lost that person's domicile in this state. The presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost that person's domicile in this state.

The presumption is that the place where a person's family is domiciled is that person's domicile. The domicile of a spouse shall be the same as the other spouse unless there is affirmative evidence to the contrary or unless the husband and wife are legally separated or the marriage has been dissolved. When a person has made

a home at any place with the intention of remaining there and the person's family neither lives there nor intends to do so, then that person shall have established a domicile separate from that person's family.

The domicile of a single person is that person's usual home. In case of a minor child who is not emancipated, the domicile of the child's parents is the domicile of the child. The domicile of the parent who has legal custody of the child is the domicile of the child. A person who is a permanent resident alien in the United States may have a domicile in this state. The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts shall be given more weight than declarations. A person who is temporarily employed within this state does not acquire a domicile in this state, if during such period the person is domiciled without this state.

Subp. 3. Considerations. The following items listed will be considered in determining whether or not a person is domiciled in this state:

- A. location of domicile for prior years;
- B. where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes;
- C. status as a student;
- D. classification of employment as temporary or permanent;
- E. location of employment;
- F. location of newly acquired living quarters whether owned or rented;
- G. present status of the former living quarters, i.e., whether it was sold, offered for sale, rented, or available for rent to another;
- H. whether homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed;
- I. ownership of other real property;
- J. jurisdiction in which a valid driver's license was issued;
- K. jurisdiction from which any professional licenses were issued;
- L. location of the person's union membership;
- M. jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles;
- N. whether resident or nonresident fishing or hunting licenses purchased;
- O. whether an income tax return has been filed as a resident or nonresident;
- P. whether the person has fulfilled the tax obligations required of a resident;
- Q. location of any bank accounts, especially the location of the most active checking account;
- R. location of other transactions with financial institutions;

S. location of the place of worship at which the person is a member;

T. location of business relationships and the place where business is transacted;

U. location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;

V. address where mail is received;

W. percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota;

X. location of jurisdiction from which unemployment compensation benefits are received;

Y. location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged; and

Z. statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

Any one of the items listed above will not, by itself, determine domicile.

Statutory Authority: *MS s 290.52*

8001.0400 FIDUCIARY DEFINED.

Subpart 1. Definition. A fiduciary means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any position of peculiar confidence toward other persons or corporations. For income tax purposes a fiduciary is a person who holds in trust an estate to which another has the beneficial title or interest, or receives and controls the income of another, as in the case of receivers.

Subp. 2. Agent distinguished. An agent is not necessarily a fiduciary, although a fiduciary relationship may exist between a principal and an agent. For instance, a real estate agent may be in complete control of the management of property with authority to execute leases and deal with tenants entirely on his own recognizance, periodically turning over the net proceeds from the rental of the property to his principal. Even though such agent receives this authority by virtue of power of attorney he is not a fiduciary within the meaning of the act. In any case where business is transacted through the principle of agency, and no legal trust has been created, the liability under this act to file returns rests with the principal.

Statutory Authority: *MS s 290.52*

8001.0500 GROSS INCOME.

Subpart 1. In general. Income is the gain derived from capital (including profit or gain through the conversion of capital assets), from labor, or from both combined. Items of gross income must be included in gross income of the taxable year in which received by the taxpayer, unless properly accounted for as of a different taxable year.

Subp. 2. Gross income to include income from sources outside Minnesota. The term "gross income" in Minnesota Statutes, section 290.01, subdivision 20 is not limited to gross income assignable to this state, but includes all gross income as defined in Minnesota Statutes, section 290.01, subdivision 20, even though it was derived from sources without this state. For rules as to assigning such gross income see Minnesota Statutes, sections 290.17 to 290.20.

Subp. 3. Compensation paid other than in cash. If services are paid for with something other than money, the fair market value of the thing taken in payment is the amount to be included as income. If a corporation transfers to its employees its own stock as compensation for services rendered by the employee, the amount of such compensation to be included in the gross income of the employee is the

fair market value of the stock at the time of the transfer. If a person received as compensation for services rendered a salary and in addition thereto living quarters, see subpart 4. The fair market value of notes or other evidence of indebtedness received in payment for services constitutes taxable income.

Subp. 4. Compensation for personal services. Compensation for personal services includes in general: compensation for personal or professional services, salaries, wages, fees, and commissions, compensation for services based on a percentage of profits, commissions on insurance premiums, tips, and pay of persons in military or naval service (but see Minnesota Statutes, sections 290.08, subdivision 16, and 290.65, subdivision 1, for military pay provisions). Also includible are marriage fees, baptismal offerings, sums for saying masses for the dead, or other contributions received by a clergyman, evangelist, or religious worker for services rendered.

Salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, agencies, or its instrumentalities or of the state of Minnesota, its political or governmental subdivisions, municipalities, agencies, or instrumentalities, are includible in gross income.

Salaries received by federal employees living in a "federal area" are includible in gross income.

Subp. 5. Income from retirement and pension funds. For the rule on amounts received from a retirement or pension fund of the United States or the state of Minnesota, see Minnesota Statutes, section 290.08, subdivision 6 and 2008 (6).

Subp. 6. Gross income from business. In general, gross income from business includes income from manufacturing, merchandising, or mining. In the case of any such business, gross income means the total sales or receipts less the cost of goods purchased for resale, plus any income from investments and from incidentals or outside operations or sources. In determining the gross income, subtraction should not be made for any of the deductions from gross income allowed under the provisions of Minnesota Statutes, chapter 290.

A. If a corporation, in order solely to secure the payment of its bonds or other indebtedness, places property in trust or sets aside certain amounts in a sinking fund under the control of a trustee who may be authorized to invest and reinvest such sums from time to time, the property or fund thus set aside by the corporation and held by the trustee is an asset of the corporation, and any gain arising therefrom is income of the corporation and shall be included as such in its gross income.

B. Any amount transferred from a reserve or other account to surplus shall be included in gross income in the year in which the transfer was made but only if such amount was deducted from gross income or entered into the computation of net income in any taxable year ending after December 31, 1932, and provided further, to the extent that it reduced the tax imposed by this act.

Subp. 7. Gross income from farming. A taxpayer reporting farm income on the basis of receipts and disbursements (that is, not on an accrual basis) shall include in his gross income for the taxable year (1) the amount of cash or the value of merchandise or other property received during the taxable year from the sale of livestock and produce which were raised during the taxable year or prior years, (2) the profits from the sale of any livestock or other items which were purchased, and (3) gross income from all other sources. The profit from the sale of livestock or other items which were purchased after January 1, 1933, is to be ascertained by deducting the cost from the sales price in the year in which the sale occurs, except that in the case of the sale of animals purchased as draft or work animals or solely for breeding or dairy purposes and not for resale, the profit shall be the amount of any excess of the sales price, over the amount representing the difference between the cost and the depreciation theretofore allowed (but not less than the amount allowable) in respect of such property as a deduction in computing net income.

In the case of a taxpayer reporting farm income on the accrual basis (in which an inventory is used to determine profits), his gross profits are ascertained by adding to the inventory value of livestock and products on hand at the end of the year the amount received from the sale of livestock and products, and miscellaneous receipts for hire of teams, machinery, and the like, during the year, and deducting from this sum the inventory value of livestock and products on hand at the beginning of the year and the cost of livestock and products purchased during the year. In such cases all livestock raised or purchased for sale shall be included in the inventory at their proper valuation determined in accordance with the method authorized and adopted for the purpose. Also livestock acquired for draft, breeding, or dairy purposes and not for sale, may be included in the inventory, instead of being treated as capital assets subject to depreciation, provided such practice is followed consistently by the taxpayer. In case of the sale of any livestock included in an inventory, their cost must not be taken as an additional deduction in the return of income, as such deduction will be reflected in the inventory.

In the case of the sale of machinery, farm equipment, or other capital assets, the gain or loss therefrom is included in gross income in accordance with the provisions of Minnesota Statutes, sections 290.12 to 290.16.

Proceeds received from hail and fire insurance resulting from damaged crops shall be included in gross income.

For the treatment of Commodity Credit Corporation loans as income, see part 8007.3000 and Minnesota Statutes, section 290.073.

Subp. 8. Amounts derived from dealings in property. In general, amounts received from every kind of disposition of, or dealings in property is includible in gross income in accordance with the provisions of Minnesota Statutes, sections 290.12 to 290.16.

A. If shares of stock in a corporation are purchased at different dates or at different prices, and the identity of the lots cannot be determined, stock sold from such lots shall be charged against the earliest purchases of such stock. The excess of the amount realized on the sale over the cost or other basis of the stock will constitute gain. In the case of stock in respect of which any stock dividend has been paid, the basis for determining gain or loss from a sale of a share of such stock shall be ascertained in accordance with the principles specified in 2014 (8). In any case where common stock is received as a bonus with a purchase of preferred stock or bonds, the total purchase price shall be fairly apportioned between such common stock and the securities purchased for the purpose of determining the portion of the cost attributable to each class of stock or securities, but if that should be impracticable in any case, no profit on any subsequent sale of any part of the stock or securities will be realized until the total cost shall have been recovered out of the proceeds of sales.

A distribution made by a corporation to its shareholders in rights to acquire its stock shall be treated as a dividend to the full extent that it constitutes income to the shareholders. The same general rules apply as to the taxability in certain instances of stock dividends. See Minnesota Statutes, section 290.01, subdivision 21.

In cases where the rights to acquire stock are not taxable, gain or loss may be sustained by the shareholder from the sale of such rights. In this connection the following rules may be stated:

(1) If the shareholder does not exercise, but sells his rights to subscribe, the cost or other basis of the stock in respect of which the rights are issued shall be apportioned between the rights and the stock in proportion to the respective values thereof at the time the rights are issued, and the basis for determining gain or loss from the sale of a right on one hand or a share of stock on the other will be the quotient of the cost or other basis assigned to the rights

MINNESOTA RULES 1987

7211

TAX DEFINITIONS 8001.0500

or the stock, divided, as the case may be, by the number of rights issued or by the number of shares held.

(2) If the shareholder exercises his rights to subscribe, the basis for determining gain or loss from a subsequent sale of a share of the stock in respect of which the rights were issued shall be determined as in subitem (1). The basis for determining gain or loss from a subsequent sale of a share of the stock obtained through exercising the rights shall be determined by dividing the part of the cost or other basis of the old shares assigned to the rights, plus the subscription price of the new shares, by the number of new shares obtained.

If the stock in respect of which the rights are issued was purchased at different times or at different prices and the identity of the lot cannot be determined, or if the stock in respect of which the rights are issued was purchased at different times or at different prices and the stock rights issued in respect of any particular lot of such stock, the basis for determining the gain or loss from the sale of the old shares or the rights in cases where the rights are sold or from the sale of the old or new shares in cases where the rights are exercised, shall be ascertained in accordance with the principles laid down in 2014 (8).

Although interest on certain bonds and other obligations of the United States is exempt from taxation, except as noted in subpart 9, gains and profits from the sale or other disposition of such bonds and obligations are taxable to the same extent as gains and profits from the sale or other disposition of other property.

B. A taxpayer disposing of patents or copyrights by sale or exchange should determine the gain or loss arising therefrom by computing the difference between the selling price and the cost or other basis, with proper adjustment for depreciation as provided in parts 8009.4000 to 8009.5900 and 2009 (7)(B)(a).

C. Gain or loss from a sale of good will results only when the business or part of it, to which the good will attaches, is sold, in which case the gain or loss will be determined by comparing the sale price with the cost or other basis of the assets, including good will.

D. If a tract of land is purchased with a view to dividing it into lots or parcels of ground to be sold as such, the cost or other basis shall be equitably apportioned to the several lots or parcels, and made a matter of record on the books of the taxpayer, to the end that any gain derived from the sale of any such lots or parcels which constitutes taxable income may be returned as income for the year in which the sale is made. This part contemplates that there will be gain or loss on every lot or parcel sold, and not that the capital in the entire tract may be recovered before any taxable income shall be returned. The sale of each lot or parcel will be treated as a separate transaction, and gain or loss computed accordingly.

E. Whether the acquisition or disposition by the corporation of shares of its own capital stock gives rise to taxable gain or deductible loss depends upon the real nature of the transaction, which is to be ascertained from all facts and circumstances. The receipt by a corporation of the subscription price of shares of its capital stock upon their original issuance gives rise to neither taxable gain nor deductible loss, whether the subscription or issue price be in excess of, or less than, the par or stated value of such stock.

But, if a corporation deals in its own shares as it might in the shares of another corporation, the resulting gain or loss is to be computed in the same manner as though the corporation were dealing in the shares of another. So also if the corporation receives its own stock as consideration upon the sale of property by it, or in satisfaction of indebtedness to it, the gain or loss resulting is to be computed in the same manner as though the payment has been made in any other property. Any gain derived from such transactions is subject to tax, and any loss sustained is allowable as a deduction where permitted by the provisions of the act.

F. Regarding the sale of capital assets by a corporation, if property is acquired and later sold for an amount in excess of the cost or other basis, the gain on the sale is income. If, then, a corporation sells its capital assets in whole or in part, it shall include in its gross income for the year in which the sale was made, the gain from such sale, computed as provided in Minnesota Statutes, sections 290.12 to 290.16. If the purchaser takes over all the assets and assumes the liability, the amount so assumed is part of the selling price.

G. Regarding the sale and purchase by a corporation of its bonds:

(1) If bonds are issued by a corporation at their face value, the corporation realizes no gain or loss.

If the corporation purchases any of such bonds, at a price in excess of the issuing price or face value, the excess of the purchase price over the issuing price or face value is a deductible expense for the taxable year.

If, however, the corporation purchases any of such bonds at a price less than the issuing price or face value, the excess of the issuing price or face value over the purchase price is gain or income for the taxable year.

(2) If, subsequent to January 1, 1933, bonds are issued by a corporation at a premium, the net amount of such premium is gain or income which should be prorated or amortized over the life of the bonds.

If the corporation purchases any of such bonds at a price in excess of the issuing price minus any amount of premium already returned as income, the excess of the purchase price over the issuing price minus any amount of premium already returned as income (or over the face value plus any amount of premium not yet returned as income) is a deductible expense for the taxable year.

If, however, the corporation purchases any such bonds at a price less than the issuing price minus any amount of premium already returned as income, the excess of the issuing price, minus any amount of premium already returned as income (or of the face value plus any amount of premium not yet returned as income), over the purchase price is gain or income for the taxable year.

(3) If bonds are issued by a corporation at a discount, the net amount of such discount is deductible and should be prorated or amortized over the life of the bonds.

If the corporation purchases any of such bonds at a price in excess of the issuing price plus any amount of discount already deducted, the excess of the purchase price over the issuing price plus any amount of discount already deducted (or over the face value minus any amount of discount not yet deducted) is a deductible expense for the taxable year.

If, however, the corporation purchases any of such bonds at a price less than the issuing price plus any amount of discount already deducted, the excess of the issuing price, plus any amount of discount already deducted (or of the face value minus any amount of discount not yet deducted), over the purchase price is gain or income for the taxable year.

(4) If bonds were issued by a corporation prior to January 1, 1933, at a premium, the net amount of such premium was gain or income for the year in which the bonds were issued and should not be prorated or amortized over the life of the bonds.

If the corporation purchases any of such bonds at a price in excess of the face value of the bonds, the excess of the purchase price over the face value is a deductible expense for the taxable year.

If, however, the corporation purchases any of such bonds at a price less than the face value, the excess of the face value over the purchase price is gain or income for the taxable year.

With respect to the exclusion or deduction from gross income of income or expense attributable to the discharge of indebtedness in the case of corporations,

MINNESOTA RULES 1987

7213

TAX DEFINITIONS 8001.0500

concerning the taxable years after December 31, 1941, see Minnesota Statutes, section 290.09, subdivision 12.

Subp. 9. Interest. In general, all interest received is includible in gross income. Corporations taxable under Minnesota Statutes, section 290.02, the excise tax provision of the act, and banking corporations taxable under Minnesota Statutes, section 290.361, must include in their taxable net income all interest received on obligations of the United States or its possessions, or the state of Minnesota, or any of their subdivisions, agencies, or instrumentalities. In an individual, fiduciary, or partnership return, interest from obligations of the United States or its possessions, or the state of Minnesota, or any of their subdivisions, agencies, or instrumentalities, is not includible in gross income (see Minnesota Statutes, section 290.08, subdivisions 7 and 8).

Interest received on annuities, life insurance, or endowment contracts shall be treated in accordance with Reg. 2008 (4) and Minnesota Statutes, section 290.08.

Interest is deemed to be received when accrued or when received depending upon the method of accounting used by the taxpayer. Interest becomes taxable to a taxpayer reporting on a cash basis when it is made available to him. Coupons on bonds which are due but have not been cashed are considered as received provided that the cash for payment of the coupons is available. Accrued interest paid on bonds purchased between interest payment dates shall be treated as a deduction from the interest received thereon. Accrued interest received on bonds sold between interest payment dates shall be treated as gross income.

Interest received from savings and loan and building and loan associations is includible in gross income even though such organizations may have been federalized.

In regard to the treatment of income from United States government obligations issued at a discount, see Minnesota Statutes, section 290.071, and also 2007.1 (1).

Subp. 10. Rent. In general, the gross amount of rents received from real estate located within Minnesota must be reported as Minnesota gross income regardless of the residence or domicile of the owner.

Rents received must be included in gross income when they accrue or when they are actually received by the taxpayer, depending upon the method of accounting used in reporting income. Rents which have not actually been received in cash will be considered as received if available to or subject to the disposition of the landlord.

Rents received from the United States government for real estate located within Minnesota are includible in gross income.

Income to lessor corporation from leased property. If a corporation has leased its property in consideration that the lessee shall pay in lieu of other rental an amount equivalent to a certain rate of dividend on the lessor's capital stock or the interest on the lessor's outstanding indebtedness, together with taxes, insurance, or other fixed charges, such payments shall be considered rental payments and shall be returned by the lessor corporation as income, notwithstanding the fact that the dividends and interest are paid by the lessee directly to the shareholders and bondholders of the lessor. The fact that a corporation has conveyed or let its property and has parted with its management and control, or has ceased to engage in the business for which it was originally organized, will not relieve it from liability of the tax. While the payments made by the lessee directly to the bondholders or shareholders of the lessor are rentals as to both the lessee and lessor (rentals paid in one case and rentals received in the other), to the bondholders and the shareholders such amounts are interest and dividend payments received as from the lessor and as such shall be accounted for in their returns.

MINNESOTA RULES 1987

8001.0500 TAX DEFINITIONS

7214

Subp. 11. Improvements by lessees. For all taxable years beginning on or after January 1, 1943, with respect to income derived by a lessor on real property upon termination of a lease, representing the value of such property attributable to buildings erected and other improvements made by the lessee, see Minnesota Statutes, sections 290.08, subdivisions 13 and 14, and 290.14, subdivision 12, part 8008.0400, and 2014(12).

For all taxable years beginning on or before December 31, 1942, if buildings are erected or improvements made by a lessee and such betterments immediately become the property of the lessor, as for instance, if they are not subject to removal by the lessee, the lessor may at his option report the income therefrom upon any one of the following bases:

A. report as income for the taxable year in which such betterments are completed, the fair market value at the time of completion;

B. report as income at the time when such betterments are completed, the fair market value of same subject to the lease;

C. spread over the life of the lease the estimated depreciated value of same at the expiration of the lease and report as income each year of the lease an aliquot part thereof.

In the case of loss by fire or other casualty the lessor may deduct the amount previously reported as income because of the erection of such improvements less proper adjustment for depreciation in case option A was exercised and less the amount compensated for by insurance.

Subp. 12. Annuities and insurance policies. Proceeds from annuities and insurance policies shall be governed as provided in Minnesota Statutes, section 290.08, and 2008 (3), (4).

Subp. 13. Income from discharge of indebtedness. The cancellation of indebtedness, in whole or in part, may result in the realization of income. If, for example, an individual performs services for a creditor, who in consideration thereof cancels the debt, income in the amount of the debt is realized by the debtor as compensation for his services. A taxpayer realizes income by the payment or purchase of his obligations at less than their face value. Income is not realized by a taxpayer by virtue of the discharge of his indebtedness as the result of an adjudication in bankruptcy, or by virtue of a composition agreement among his creditors if immediately thereafter the taxpayer's liabilities exceed the value of his assets.

With respect to taxable years beginning after December 31, 1941, a corporation may elect to have excluded from its gross income the amount of income attributable to a discharge of its indebtedness or indebtedness for which it is liable if it complies with the provisions of Minnesota Statutes, section 290.09, subdivision 12 and the rules thereunder.

Subp. 14. Gross income of individuals, estates and trusts. The statute specifically states that with respect to individual taxpayers, estates, and trusts gross income shall be the adjusted gross income computed for federal income tax purposes for the year in question subject to the following additions and subtractions from said figure.

A. In determining the gross income of an individual, estate, or trust for Minnesota income tax purposes there shall be added to such taxpayer's federal adjusted gross income the following items:

(1) Interest income on obligations of any state other than Minnesota or a political subdivision of any such other state exempt from federal income taxes under the Internal Revenue Code;

(2) Interest income on obligations of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax, but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdic-

MINNESOTA RULES 1987

7215

TAX DEFINITIONS 8001.0500

tion, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax; and

(4) Interest on indebtedness incurred or continued to purchase or carry securities the income from which is exempt from tax under Minnesota Statutes, chapter 290, to the extent deductible in determining federal adjusted gross income.

B. In addition to the adjustments set forth in item A, there shall be deducted from such federal adjusted gross income figure the following items:

(1) interest income on obligations of any authority, commission, or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) the portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis, but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain;

(3) interest or dividend income on securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such securities but includible in gross income for federal income tax purposes.

C. Any amount received as a refund on account of state income taxes paid shall be deducted from federal adjusted gross income.

D. Administration expenses; estates.

(1) Amounts allowable under Minnesota Statutes, section 291.07, subdivision 1, clause (2) (relating to administration expenses) as deductions in computing the taxable estate of a decedent are not allowed as deductions in computing the taxable income of the estate unless there is filed a statement, in duplicate, to the effect that the items have not been allowed as deductions from gross estate of the decedent under Minnesota Statutes, section 291.07, subdivision 1, clause (2) and that all rights to have such items allowed at any time as deductions under Minnesota Statutes, section 291.07, subdivision 1, clause (2) are waived. The statement should be filed with the return for the year for which the items are claimed as deductions or with the commissioner for association with the return. The statement may be filed at any time before the expiration of the statutory period of limitation applicable to the taxable year for which the deduction is sought. Allowance of the deduction in computing an estate's taxable income is not precluded by claiming a deduction in the inheritance tax return, so long as the inheritance tax deduction is not finally allowed and the statement is filed. However, after a statement is filed under Minnesota Statutes, section 290.01, subdivision 20, paragraph (c) with respect to a particular item or portion of an item, the item cannot thereafter be allowed as a deduction for inheritance tax purposes since the waiver operates as a relinquishment of the right to have the deduction allowed at any time under Minnesota Statutes, section 291.07, subdivision 1, clause (2).

(2) It is not required that the total deductions, or the total amount of any deduction, to which Minnesota Statutes, section 290.01, subdivision 20, paragraph (c) is applicable, be treated in the same way. One deduction or portion of a deduction may be allowed for income tax purposes if the appropriate statement is filed, while another deduction or portion is allowed for inheritance tax purposes. Minnesota Statutes, section 290.01, subdivision 20, paragraph (c) has no application to deductions for taxes, interest, business expenses, and other items accrued at the date of a decedent's death so that they are allowable as a deduction under Minnesota Statutes, section 291.07, subdivision 1, clause (4) for inheritance tax purposes as claims against the estate, and are also allowable under

Minnesota Statutes, section 290.077, subdivision 2 as deductions in respect of a decedent for income tax purposes. However, Minnesota Statutes, section 290.01, subdivision 20, paragraph (c) is applicable to deductions for interest, business expenses, and other items not accrued at the date of the decedent's death so that they are allowable as deductions for inheritance tax purposes only as administration expenses under Minnesota Statutes, section 291.07. Although deductible under Minnesota Statutes, section 291.07, clause (4) in determining the value of the taxable estate of a decedent, medical, dental, etc., expenses of a decedent which are paid by the estate of the decedent are not deductible in computing the taxable income of the estate. For additional modification of federal adjusted gross income by partners and shareholders of small business corporations see 2009 (23) 5, 6, and 7 and part 8097.0300.

Subp. 15. Tax refunds included in gross income. Any amount received as a refund on account of tax paid shall be included in gross income in the year received to the extent that such taxes were deducted from gross income in any taxable year ending after December 31, 1932; provided, however, that the refund shall be included in gross income only to the extent that the deduction reduced the tax liability for a prior year. In the case where federal income taxes withheld or declared are in excess of the amount actually due, the excess shall be considered as taxable income in the year in which received, subject to the provisions of this paragraph.

If in a taxable year after December 31, 1947, a husband and wife receive a refund of all or part of a federal income tax paid by them on income reported in a joint federal return, and if they had filed separate Minnesota returns for the taxable year in which they had paid such federal income tax, the refund must be included in the return of the husband and wife in the same ratio that each was allowed the deduction for such federal tax in their separate Minnesota returns.

Subp. 16. Trust income taxable to grantor as substantial owner. Income of a trust is taxable to the grantor although not payable to the grantor himself and not to be applied in satisfaction of his legal obligations if he has retained a control of the trust so complete that he is still in practical effect the owner of its income. See 2028.

Subp. 17. Income derived from any source. Income derived from any source whatsoever except as provided in this act, and the Constitution of the state of Minnesota is includible in the gross income of the recipient.

Income from property acquired by gift, devise, bequest, or inheritance or a right to receive income is includible in gross income.

The value of merchandise taken from stock by a merchant for family use is includible in gross income.

The income derived from an illegal business is includible in gross income.

Whenever doubt exists as to the taxability of income, a request for an opinion from the commissioner of taxation should be made, as failure to report taxable income because of lack of knowledge will not relieve a taxpayer from the penalties imposed by this act.

Subp. 18. Distributive share of partnership income. For rules on the inclusion in the gross income of a partner of his distributive share or partnership income, see Minnesota Statutes, section 290.311 and the rules thereunder.

Subp. 19. Prizes and awards. For rules on the inclusion of prizes and awards in gross income, see 2008.01 and Minnesota Statutes, section 290.0801.

Subp. 20. Income from services of child. For rules on the gross income from the services of a child, see 2007.6 and Minnesota Statutes, section 290.076.

Subp. 21. Alimony, separate maintenance payments, support payments. For rules on the inclusion of alimony, separate maintenance, or support payments in gross income, see Minnesota Statutes, section 290.072.

Subp. 22. Income in respect of decedent. For rules on the inclusion in gross

MINNESOTA RULES 1987

7217

TAX DEFINITIONS 8001.0600

income of income received in respect of a decedent, see 2007.7 (1) Minnesota Statutes, section 290.077.

Subp. 23. General exclusions; conflicts. The theory adopted by the 1961 legislature involving utilization of federal adjusted gross income as the basis for the imposition of income taxes upon individuals, estates, and trusts results in conflicts between such theory and certain other provisions of Minnesota Statutes, chapter 290. In these cases such conflicts will be resolved by considering that the provisions last passed by the legislature control and in any event the theory of federal adjusted gross income as a basis will be the governing factor.

Statutory Authority: *MS s 290.52*

NOTE: Regulations 2007.1 (1); 2007.6; 2007.7 (1); 2008 (3); 2008 (4); 2008 (6); 2008.01; 2009 (7)(B)(a); 2009 (23) 5; 2009 (23) 6; 2009 (23) 7; 2014 (8); 2014 (12); and 2028 have been repealed.

NOTE: Minnesota Statutes, sections 290.072, 290.076, and 290.0801, were repealed by Laws of Minnesota 1975, chapter 349, section 31; 1981, chapter 178, section 119. Minnesota Statutes, section 291.07, was repealed by Laws of Minnesota 1985, First Special Session, chapter 14, article 13, section 14.

8001.0600 DIVIDENDS.

Subpart 1. Dividends includible in gross income. Dividends received on shares of stock in national and state banks, cooperative associations, and personal service associations are taxable in the same manner as dividends received from any other source.

Amounts distributed to patrons as a net patronage refund in the form of certificates of capital stock or credits to reserve accounts or other accounts for the benefit of the patron are included in the gross income of the patron for the taxable year in which the certificates of capital stock are issued or the credit is actually or constructively received to the extent of the face value of the certificate of capital stock or of the credit.

Dividends received from savings and loan and building and loan associations are includible in gross income even though such organizations may have been federalized.

Subp. 2. Method of taxation of shareholders of regulated investment companies. In general, shareholders who receive capital gain dividends from a regulated investment company distributed during a taxable year of the regulated investment company for which it is taxable under the Internal Revenue Code of 1954, section 852 (b) shall treat such dividends as gains from the sale or exchange of capital assets held for more than six months.

A capital gain dividend, as defined in the Internal Revenue Code of 1954, section 852 (b)(3)(c) is any dividend or part thereof which is designated by a regulated investment company as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to the taxable year is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For example, a regulated investment company making its return on the calendar year basis advised its shareholders by written notice mailed December 30, 1955, that of a distribution of \$500,000 made December 15, 1955, \$200,000 constituted a capital gain dividend, amounting to \$2 per share. It was later discovered that an error had been made in determining the excess of the net long-term capital gain over the net short-term capital loss of the taxable year and that such excess was \$100,000 instead of \$200,000. In such case each shareholder would have received a capital gain dividend of \$1 per share instead of \$2 per share.

Statutory Authority: *MS s 290.52*

8001.0700 TAXABLE NET INCOME.

Subpart 1. **Taxable net income; individuals, estates, and trusts.** In determining the taxable net income of individuals, estates, and trusts in accordance with the provisions of Minnesota Statutes, section 290.18, subdivision 1, there shall be taken into account only those items of deduction, exclusion, election, or special treatment provided for by Minnesota Statutes, chapter 290 which have not in any manner entered into the calculation of federal adjusted gross income under the Internal Revenue Code applicable to the year in question. For example, inasmuch as the net operating loss computed in accordance with the provisions of the Internal Revenue Code is allowed in arriving at federal adjusted gross income no further deduction is allowable under the provisions of Minnesota Statutes, section 290.095. Conversely, inasmuch as the Internal Revenue Code does not permit the exclusion of the first \$3,000 of compensation for personal service in the Armed Forces the provisions of Minnesota Statutes, section 290.65 will be effective to permit such exclusion where applicable.

It should also be noted that inasmuch as the Internal Revenue Code makes provision for the deferment of any gain realized on the sale of a personal residence, under specified circumstances, which rules are substantially the same as those set forth in Minnesota Statutes, section 290.13, subdivision 9, no further calculation or adjustment may be made in accordance with the provisions of this subdivision.

This principle may be illustrated by considering the matter of depreciation. Inasmuch as a depreciation allowance is given in determining federal adjusted gross income no such allowance is to be again deducted under the provisions of Minnesota Statutes, section 290.09, subdivision 7, even though the dollar amount of the allowance for federal purposes may be different than the amount computed under Minnesota Statutes, chapter 290. This rule applies also to depletion and other items of deduction spelled out in Minnesota Statutes, section 290.09.

Subp. 2. **Apportionment of income between Minnesota and other states and countries.** Taxpayers claiming an apportionment of income under Minnesota Statutes, sections 290.17, 290.18, 290.19, and 290.20 must establish to the satisfaction of the commissioner that the character of their transactions and manner of the conduct of their affairs without Minnesota are such that they are entitled to an apportionment.

The fact that transactions may be effected without Minnesota does not necessarily mean that an apportionment of income is available to the taxpayer.

Statutory Authority: *MS s 290.52*

8001.9000 INCORPORATION BY REFERENCE OF INTERNAL REVENUE CODE.

An incorporation by reference of the Internal Revenue Code in Minnesota Statutes, chapter 290 or 290A shall be interpreted in accordance with any regulations or rulings adopted or issued by the Internal Revenue Service which govern the referenced provisions.

Statutory Authority: *MS s 290.52*