Inheritance, Gift, Income, and Privilege Taxes

CHAPTER 290

INCOME TAXES AND PRIVILEGE TAXES ON CORPORATIONS MEASURED BY INCOME

290.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subdivision 2. **Person.** The term "person" includes individuals, fiduciaries, estates, and trusts, and partnerships not included in the definition of corportions and may, where the context requires, include corporations as herein defined.

Subdivision 3. **Partnership.** The term "partnership" means any partnership not of the class included in the definition of corporations.

Subdivision 4. **Corporation.** The term "corporation" includes a banking corporation organized under the laws of the United States or of this state; joint stock companies and corporations existing under the laws of any state or country; limited partnerships organized under chapter 322, and partnerships similar in nature organized under the laws of other states; associations, other than ordinary partnerships, and common-law trusts organized or conducted for profit.

Subdivision 5. **Domestic and foreign corporations.** The term "domestic" when applied to a corporation means a corporation created or organized in Minnesota or under its laws; and the term "foreign" when thus applied means a corporation other than a domestic corporation. The existence of any domestic corporation shall be deemed the exercise by it of the privilege of existing as a corporation; the grant to any foreign corporation of the right to engage in transacting local business within this state shall be deemed the grant to it of the privilege of transacting such business within this state in corporate or organized form; and the transaction of the local business within this state by any foreign corporation shall be deemed the transaction of such business within this state in corporate or organized form.

Subdivision 6. **Taxpayer.** The term "taxpayer" means any person or corporation subject to a tax imposed by this chapter.

Subdivision 7. **Resident.** The term "resident" means any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such tax year, have been domiciled outside the state.

Subdivision 8. **Fiduciary.** The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person or corporation.

Subdivision 9. **Taxable year.** The term "taxable year" means the period for which the taxes levied by this chapter are imposed. It shall be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which such return is made.

Subdivision 10. **Fiscal year.** The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

Subdivision 11. **Paid or incurred, paid or accrued, received, or received or accrued.** The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which net income is computed for the purposes of the taxes imposed by this chapter; and the terms "received" and "received or accrued" shall be similarly construed.

Subdivision 12. **Stock or share.** The term "stock" or "share" means the interest of a member in a corporation however evidenced.

Subdivision 13. **Stockholder or shareholder.** The term "stockholder" or "shareholder" means the owner of any such "stock" or "share."

Subdivision 14. **State or this state.** The term "state" or "this state" means the state of Minnesota.

Subdivision 15. **Includes.** The term "includes" and its derivatives, when used in a definition contained in this chapter, shall not exclude other things otherwise within the meaning of the term defined.

Subdivision 16. **Commissioner.** The term "commissioner" means the commissioner of taxation of the state of Minnesota.

Subdivision 17. **Property.** The term "property" includes every form of property, real, personal, or mixed, tangible or intangible, and every interest therein, legal or equitable, irrespective of how created or arising. Property pledged or mortgaged shall be treated as owned by the pledgor or mortgagor.

Subdivision 18. **Duty on estate or trust.** When, in this chapter, the estate of a decedent or a trust is referred to as a taxable person, or a duty is imposed on such estate or trust, the reference may be construed as meaning the fiduciary in charge of the property of such estate or trust, and the duty shall be treated as imposed on such fiduciary.

Subdivision 19. **Net income.** The term "net income" means the gross income, as defined in subdivision 20 of this section, less the deductions allowed by section 290.09.

Subdivision 20. **Gross income.** The term "gross income" includes every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any source. Items of gross income includible within these definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by section 290.07, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that such amounts were accumulated through deductions from gross income or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received. Am 1943-656-11

Subdivision 21. **Dividends.** (1) The term "dividends" means any distribution made by a corporation to its shareholders, whether in money or other property, out of its accumulated earnings or profits. Every distribution shall be treated as made out of earnings or profits if, and to the extent that, any such earnings or profits are available on the date the action ordering such distribution was taken or, if no such action was taken, on the date of the actual payment or credit of such distribution to shareholders; and, for the purposes hereof, the earnings or profits for the year during which any such distribution was so made shall be prorated on the time basis. 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) If a distribution (other than a distribution in liquidation) is made by a corporation that is not out of earnings or profits, the distributee may receive the same free from tax until the amount thereof equals the loss or gain basis applicable to the stock in respect of which it is received, but amounts received in excess thereof shall be treated as income for the taxable year when received by him; amounts received tax-free hereunder shall be applied to reduce the loss or gain basis

applicable to the stock in respect of which received when such stock is sold or otherwise disposed of;

(3) A stock dividend shall not be treated as income; but, 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 cancelation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in cancelation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits. A dividend shall be deemed a stock dividend only if made in stock of the same kind or class as that with respect to which it was distributed;

(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. Amounts distributed in complete liquidation of a corporation shall be taken into account in computing net income only to the extent provided by section 290.16, subdivision 2, and for that purpose "complete liquidation" includes any one of a series of distributions made by a corporation in complete cancelation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of property under the liquidation is to be complete within the time specified in the plan, not exceeding two years from the close of the taxable year during which is made the first of the series of distributions under the plan. 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.

Subdivision 22. **Taxable net income.** The "taxable net income" means the net income assignable to this state and shall be determined as provided in sections 290.17 to 290.20.

[*1933 c. 405 ss. 1, 10, 11, 21, 22; Ex. 1937 c. 49 s. 16; 1941 c. 550 ss. 4, 11*] *(2394-1) (2394-10) (2394-11) (2394-21) (2394-22)*

290.02 IMPOSITION OF PRIVILEGE TAX ON CORPORATIONS; MEASUREMENT. An annual tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter.

[*1933 c. 405 s. 2; Ex. 1937 c. 49 s. 2*] *(2394-2)*

290.03 CLASSES OF TAXPAYERS. An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;

(2) Resident and non-resident individuals, except that no non-resident individual shall be taxed on his income from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year;

(3) Estates of decedents, dying domiciled within or without this state; and,

(4) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations.

[*1933 c. 405 s. 3; Ex. 1937 c. 49 s. 3; 1941 c. 550 s. 1*] *(2394-3)*

290.04 LIABILITY. Subdivision 1. **Accrual.** The liability for the tax imposed by section 290.02 shall arise upon the first day of the taxable year upon which a domestic corporation exercises any of the privileges specified in section 290.02 or exists as a corporation, or on which a foreign corporation is possessed of the privilege for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form. The liability of the tax imposed by section 290.03 shall arise concurrently with the receipt or accrual of income during the taxable year. The provisions shall in no way affect the determination of the amount of such taxes, the time for making returns, and the time for paying such taxes.

Subdivision 2. **Fiduciary relationship not to affect.** The liability of any taxpayer shall remain unaffected by the fact that such taxpayer, or the title, possession, custody, or control of his business or property, is in the care of a guardian, trustee, receiver, conservator, or any other person acting in any fiduciary capacity for such taxpayer or in reference to his business or property, unless the taxes imposed by this chapter are specifically imposed by this chapter upon any such guardian, trustee, receiver, conservator, or fiduciary.

[*1933 c. 405 s. 4; Ex. 1937 c. 49 s. 4*] *(2394-4)*

290.05 EXEMPTIONS. The following corporations, individuals, estates, trusts, and organizations shall be exempted from taxation under this chapter, provided that every such person or corporation claiming exemption under this chapter, in whole or in part, must file with the commissioner upon request such financial statements as are necessary to enable him to determine the taxable status of any income or activity:

(1) National and state banks, except as such banks are subject to the excise tax imposed by sections 290.361 and 290.362;

(2) Corporations, individuals, estates, and trusts engaged in the business of mining or producing iron ore; but if any such corporation, individual, estate, or trust engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in section 299.02) shall not be considered as income from the business of mining or producing iron ore within the meaning of this section;

(3) Farmers' mutual insurance companies organized and existing under the laws of the state and credit unions organized under chapter 52;

(4) Fraternal beneficiary associations wherever organized, and public department relief associations of public employees of this state or of any of its political subdivisions; Am 1943 c 43-1

(5) Cooperative or mutual rural telephone associations, and cooperative associations organized under the provisions of Laws 1923, Chapter 326, as amended, which are engaged in the transmission and distribution of electrical heat, light or power upon a mutual and cooperative plan in areas outside the corporate limits of any city or village;

(6) Labor, agricultural, and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(7) Farmers', fruit growers', or like associations organized and operated on a cooperative basis for the purpose of processing or marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary expenses, on the basis of either the quantity or the value of the products furnished by them, or for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight per cent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who process or market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose; such an association may market the products of non-members in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the pur-

chases made for persons who are neither members nor producers does not exceed 15 per cent of the value of all its purchasers; business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this clause;

(8) Corporations operating or conducting public burying grounds, public schoolhouses, public hospitals, academies, colleges, universities, seminaries of learning, churches, houses of worship, and institutions of purely public charity, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(9) Corporations organized for exclusively scientific, literary, or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(10) Business leagues and commercial clubs, not organized for profit and no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(11) Clubs organized and operated exclusively for pleasure, recreation, or other non-profitable purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(12) Any corporation all the stock of which is owned by the United States or which may be exempt from a state franchise or income tax by federal law;

(13) The State of Minnesota and all its political or governmental subdivisions, municipalities, agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions;

(14) Corporations organized by an association exempt under the provisions of clause (7), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association; exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight per cent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose;

(15) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

(16) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents if no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual.

[1933 c. 405 s. 5; Ex. 1937 c. 49 s. 5; 1939 c. 446 ss. 1, 2; 1941 c. 109; 1941 c. 550 s. 2] (2394-5)

290.06 RATES OF TAX. Subdivision 1. **Computation.** The privilege and income taxes imposed by this chapter upon corporations shall be computed by applying to their taxable net income in excess of the applicable credits allowed under section 290.21 the rate of six per cent.

Subdivision 2. **Manner of computing.** The income taxes imposed by this chapter upon individuals, estates, and trusts, other than those taxable as corporations, shall be computed by applying to their taxable net income in excess of the applicable credits allowed by section 290.21, the following schedule of rates:

(1) On the first $1,000, one per cent;
(2) On the second $1,000, two per cent;
(3) On the third $1,000, three per cent;
(4) On the fourth $1,000, four per cent;
(5) On the fifth $1,000, five per cent;
(6) On the sixth and seventh $1,000, six per cent;
(7) On the eighth and ninth $1,000, seven per cent;
(8) On all over $9,000, and not over $12,500, eight per cent;
(9) On all over $12,500, and not over $20,000, nine per cent;

(10) On the remainder, ten per cent. Am 1943-656-2

Subdivision 3. **Credits.** The taxes due under the foregoing computation shall be credited with the following amounts:

(1) In the case of an unmarried individual, and the estate of a decedent, $10.00;

(2) In the case of a married individual, living with husband or wife, and in the case of a head of a household, $30.00; if such husband and wife make separate returns the personal exemption may be taken by either or divided between them;

(3) In the case of an individual, $5.00 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer; one taxpayer only shall be allowed this credit with respect to any given dependent;

(4) In the case of a corporation, an amount computed by applying to the tax a fraction equal to one-tenth of the average of the following ratios:

(a) The ratio of the fair value of tangible property, real, personal and mixed, owned and used by the taxpayer in this state in connection with his trade or business during the income year to the total fair value of such property of the taxpayer owned and used by him in connection with the trade or business everywhere; cash on hand or in bank, shares of stocks, notes, bonds, accounts receivable or other evidence of indebtedness, special privileges, franchises, good-will or property the income of which is not taxable or is separately allocable, shall not be considered tangible property nor included in the apportionment;

(b) The ratio of the total wages and salaries paid or incurred during the income year in this state to the total wages and salaries paid or incurred during the income year everywhere;

(5) In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under this chapter is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by sections 69.54 to 69.57;

(6) If the status of a taxpayer, in so far as it affects the credits allowed under clauses (1), (2), and (3), shall change during the taxable year, or if the taxpayer shall either become or cease to be a resident of the state during such taxable year, such credit shall be apportioned, in accordance with the number of months before and after such change; for the purpose of such apportionment, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month.

[1933 c. 405 s. 6; Ex. 1937 c. 49 s. 6; 1939 c. 446 s. 3; 1941 c. 550 s. 3] (2394-6)

290.07 COMPUTATION OF NET INCOME. Subdivision 1. **Upon annual accounting period.** Net income and taxable net income shall be computed upon the basis of the taxpayer's annual accounting period; and, except as specifically provided to the contrary by this chapter, in accordance with the method of accounting regularly employed in keeping the taxpayer's books; but if no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this chapter, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly and fairly reflect income and the income taxable under this chapter. If a taxpayer has no annual accounting period, or has one other than a fiscal year, as heretofore defined, the net income and taxable net income shall be computed on the basis of the calendar year. Taxpayers shall employ the same accounting period on which they report, or would be required to report, their net income under the federal income tax act, except that their right to change accounting periods is limited as hereinafter set forth.

Subdivision 2. **Change of accounting period.** A taxpayer may change his accounting period only with the consent of the commissioner. In case of any such change, he shall pay a tax for the period not included in either his former or newly adopted taxable year, computed as provided in section 290.32.

Subdivision 3. **Returns from instalment plan sales; when made.** The commissioner may, whenever in his opinion the fair distribution of income as between taxable years will be promoted thereby, permit, under such regulations as he may prescribe, taxpayers who regularly dispose of property on the instalment plan, or who make a casual disposition of property on terms under which the initial payment in cash or property other than the purchaser's evidences of indebtedness does not exceed 40 per cent of the purchase price, to return their income from such transactions over the taxable years during which they occurred.

Subdivision 4. **What items included in gross income.** The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision 1, and such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period.

Subdivision 5. **Deductions and credits, when taken.** The deductions and credits provided for in this chapter shall be taken for a taxable year in which "paid or accrued" or "paid and incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

[*1933 c. 405 s. 9; 1939 c. 446 s. 4*] *(2394-9)*

290.08 EXEMPTIONS FROM GROSS INCOME. The following items shall not be included in gross income:

(1) The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or inheritance of a right to receive income shall also be included in gross income;

(2) Amounts received under a life insurance contract payable by reason of the death of the insured, whether in a single sum or in instalments; but the interest accruing after December 31, 1932, and paid by the insurer on any such amounts held by it after the death of the insured shall be included in gross income;

(3) Amounts received, other than those specified in clause (2), and other than amounts received as annuities, under a life insurance, or endowment contract; but, if such amounts when added to the amounts received under such contract before the taxable year (after deducting from the aggregate of amounts received such proportion as is represented by interest accrued prior to January 1, 1933) exceed the aggregate premiums or consideration paid, whether or not paid during the taxable year, then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to three per cent of the aggregate premiums or consideration paid for such annuity, whether or not paid during the taxable year, until the aggregate amount excluded from gross income under the income tax laws of this state plus the amounts received prior to January 1, 1933, (after deducting such proportion of such aggregate amount and amounts received as is represented by interest accrued prior to January 1, 1933), in respect to such annuity equal the aggregate premiums or consideration paid for such annuity. The amount which a transferee for a valuable consideration of any such contract, or interest therein, shall be permitted to exclude from his gross income shall be the actual value of the consideration paid by him plus the amount of the premiums and other sums subsequently paid by him hereunder;

(4) Amounts received as compensation for personal injuries or sickness by the injured or sick taxpayer, whether received under accident or health insurance contracts, workmen's compensation acts, any plan maintained by employers for such purpose, or by way of damages received in any suit or by agreement; also amounts received as compensation for the death of any member of the taxpayer's family, whether received under insurance contracts, workmen's compensation acts, any plan maintained by employers for such purposes, or by way of damages received in a suit or by agreement; and amounts received under any arrangement entered into by the taxpayer to provide a fund specifically intended to defray the funeral expenses of himself or any member of his family. The words "compensation" and "damages," as used in this clause, shall include reimbursement for medical, hospital, and funeral expenses in connection with such sickness, injury, or death;

(5) Amounts received by any person from the United States or the State of Minnesota by way of a pension, public employee retirement benefit, social security benefit or railroad retirement benefit, family allotment, or other similar allowance;

(6) Interest upon obligations of the State of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;

(7) Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; provided, that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies, or its instrumentalities shall be excluded from gross income for all taxable years ending prior to January 1, 1939; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its intrumentalities for taxable years ending prior to January 1, 1939, shall be excluded only to the extent that salaries, wages, commissions, fees, and other compensation received from the State of Minnesota, its political or governmental subdivisions, its municipalities, or its governmental agencies or instrumentalities for that year are excluded from gross income under the federal revenue acts; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its instrumentalities, by federal employees residing in "federal areas" shall be excluded from gross income for all taxable years ending prior to January 1, 1941;

(8) The rental value of the premises occupied by the taxpayer as his home, or for his business, except where the occupancy by such taxpayer of such premises for such purposes constitute in whole or in part the consideration received by him in connection with a transaction such that, had such consideration been received thereunder in cash or other property, the amount thereof would have been required, either in whole or in part, to be included in his gross income;

(9) The value of food and goods produced by the taxpayer and consumed or used by his immediate family;

(10) Amounts deducted from the wages or salaries of employees by employers under a voluntary or compulsory plan of unemployment insurance shall not be included in the gross income of such employees;

(11) The amounts distributed by cooperative buying, selling or producing associations, however organized, as patronage dividends shall not be included in the gross income of such associations;

(12) Clauses (3), (4), (9), and (10) shall not apply to corporations and clauses (6) and (7) shall not apply to corporations taxable under section 290.02 or under section 290.361.

[1933 c. 405 s. 12; Ex. 1937 c. 49 s. 7; 1939 c. 446 ss. 5, 6; 1941 c. 18 s. 4; 1941 c. 550 ss. 5, 6] (2394-12)

290.081 WHAT ARE INCLUDED IN INCOME TAXES. The compensation received for services performed within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of his residence; provided, that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein.

This section shall apply to taxes for the calendar year 1940 and all subsequent taxable years.

[1941 c. 429]

290.09 DEDUCTIONS FROM GROSS INCOME. The following deductions from gross income shall be allowed in computing net income:

(1) Ordinary and necessary expenses paid or incurred in conducting the activity or in carrying on the trade, profession, gainful occupation or business from which the gross income is derived, including a reasonable allowance for salaries and voluntary or compulsory contributions made by employers to maintain a voluntary or compulsory system of unemployment insurance or a system of old age pensions for their employees, and any welfare work for the benefit of such employees;

(2) The interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludible from gross income under section 290.08, or on

indebtedness incurred or continued in connection with the purchasing or carrying of an annuity;

(3) Taxes paid or accrued within the taxable year, except income or franchise taxes imposed by this chapter; taxes assessed against local benefits of a kind deemed in law to increase the value of the property assessed; and inheritance and estate taxes. Income taxes permitted to be deducted hereunder shall, regardless of the methods of accounting employed, be deductible only in the taxable year in which paid. Taxes imposed upon a shareholder's interest in a corporation which are paid by the corporation without reimbursement from the shareholder shall be deductible only by such corporation;

(4) Losses sustained during the taxable year not compensated for by insurance or otherwise if incurred in connection with a business or transaction the gains from which, if any, would be includible in gross income; or if arising from fires not attributable to arson by the taxpayer or some one acting for him, or from storms, wrecks, other casualty, or theft. Losses from wagering transactions shall be allowed only to the extent of the gain from such transactions. No deductions shall be allowed under this clause for any loss sustained in any sale or other disposition of shares of stock or other securities if within 30 days before or after the date of such sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or disposition; but if such acquisition or the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of such loss shall be disallowed. A loss deductible under this clause shall be treated as sustained in the taxable year during which the property in respect of which it has occurred is disposed of by some method of disposition other than gift, devise, bequest or inheritance, but if it shall clearly appear that it is unlikely that such property can ever be disposed of, then it shall be deemed sustained during the taxable year when it first became reasonably clear that it had become worthless, provided that deductible losses arising from fires, storms, wrecks, or other casualty shall be treated as sustained in the taxable year during which the property was injured or destroyed, and deductible losses arising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. The amount of the deductible loss shall be computed on the same basis as is provided by section 290.12 for determining the gain or loss on the sale or other disposition of property;

(5) Debts ascertained to be worthless and charged off during the taxable year, but this last shall be required only if the taxpayer keeps regular books of account; provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided, that the commissioner may allow a bad debt to be deducted or charged off in part;

(6) A reasonable allowance for the exhaustion, wear and tear of property the periodical income from which is includible in gross income, and of property used in an occupation or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiary and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of buildings or other structures or improvements constructed or made on leased premises by a lessee, and the fixtures and machinery therein installed, the lessee alone shall be entitled to the allowance of this deduction;

(7) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the case of leases the deduction shall be equitably apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with

the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each;

(8) The amount of the deduction under clauses (6) and (7) shall be computed on the basis specified in section 290.16;

(9) The deductions provided for herein shall be taken for the taxable year in which paid or accrued, dependent upon the method of accounting employed in computing net income, unless in order to clearly reflect income they should be taken as of a different year;

(10) No deductions shall be allowed unless the taxpayer, when thereunto requested by the commissioner, furnishes him with information sufficient to enable him to determine the validity and correctness thereof; Am 1943 c 656 s 8

(11) Payments for expenses for hospital, nursing, medical, surgical, dental, and other healing services and for drugs and medical supplies incurred by the taxpayer on account of sickness or of personal injury to himself or his dependents;

(12) An allowance for amortization of war facilities to the extent that such deduction is finally allowed under section 124 of the internal revenue code provided no deduction has been claimed with respect thereto under clause (6) of this section or any other section, subdivision, or clause of this chapter. Am 1943 c 656 s 24 sub (13)

[*1933 c. 405 s. 13; Ex. 1937 c. 49 ss. 8, 9; 1941 c. 550 s. 7*] *(2394-13)*

290.10 NON-DEDUCTIBLE ITEMS. In computing the net income no deduction shall in any case be allowed for:

(1) Personal, living or family expenses;

(2) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(4) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;

(5) The shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance;

(6) Losses from sales or exchanges of property, directly or indirectly, between members of a family, or, except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per cent in value of the outstanding stock; or between any person or corporation and a trust created by him or it or of which he or it is a beneficiary, directly or indirectly; for the purpose of this clause, an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestor, and lineal descendants, but such losses shall be allowed as deductions if the taxpayer shows to the satisfaction of the commission that the sale or exchange was bona fide and for a fair and adequate consideration;

(7) In computing net income, no deduction shall be allowed under section 290.09, clause (1), relating to expenses incurred or under section 290.09, clause (2), relating to interest accrued; and

(a) If such expenses or interest not paid within the taxable year or within two and one-half months after the close thereof; and

(b) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(c) If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under clause (6);

(8) Contributions by employees under the federal railroad retirement act, the federal social security act, or to Minnesota public employee retirement funds.

[*1933 c. 405 s. 14; Ex. 1937 c. 49 s. 11; 1939 c. 446 s. 7; 1941 c. 550 s. 8*] *(2394-14)*

290.11 INVENTORIES SHALL BE TAKEN IN CERTAIN CASES. When in the opinion of the commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business involved and as most clearly reflecting the income.

[1933 c. 405 s. 15] (2394-15)

290.12 GAIN AND LOSS ON SALES. Subdivision 1. **Measurement.** The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in sections 290.14 and 290.15 and the loss shall be the excess of such basis over the amount realized, except that such basis shall, in the case of both gain and loss, be adjusted as provided in subdivision 2 of this section.

Subdivision 2. **Adjustments.** In computing the amount of gain or loss under subdivision 1 proper adjustment shall be made for any expenditure, receipt, loss, or other item properly chargeable to capital account by the taxpayer during his ownership thereof. The basis shall be diminished by the amount of the deductions for exhaustion, wear, tear, obsolescence, and depletion which could, during the period of his ownership thereof, have been deducted by the taxpayer under this chapter in respect of such property. In addition, if the property was acquired before January 1, 1933, the basis, if other than the fair market value as of such date, shall be diminished by the amount of exhaustion, wear, tear, obsolescence, or depletion actually sustained before such date. In the case of stock the basis shall be diminished by the amount of tax-free distributions of capital received by the taxpayer in respect of such stock at any time during his ownership thereof. For the purpose of determining the amount of these adjustments the taxpayer who sells or otherwise disposes of property acquired by gift shall be treated as the owner thereof from the time it was acquired by the last preceding owner who did not acquire it by gift, and the taxpayer who sells or otherwise disposes of property acquired by gift through an inter vivos transfer in trust shall be treated as the owner from the time it was acquired by the grantor. The adjustments in case of a sale or other disposition of property received in a transaction of the kind specified in section 290.13, and in the case of a transaction referred to in section 290.14, clause (7), shall include those which the taxpayer should have been required to make were he selling or otherwise disposing of the property exchanged, or sold, in any such transaction.

Subdivision 3. **Amount realized from sale of property.** The amount realized from the sale or other disposition of property shall be the sum of any money received, plus the fair market value of the property, other than money, received.

Subdivision 4. **Exceptions.** The disposition of property by gift, devise, bequest, or inheritance, and the passing of property from a decedent to his estate, shall be treated as dispositions from which neither gain nor loss arises for the purposes of this chapter.

[1933 c. 405 s. 16] (2394-16)

290.13 TRANSACTIONS IN WHICH GAIN OR LOSS IS NOT RECOGNIZED. Subdivision 1. **Exceptions.** No gain or loss from the following transactions shall be recognized at the time of their occurrence, except as otherwise specified in this section:

(1) If ~~the~~ property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment;

(2) If common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation;

(3) If stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization;

(4) If a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization;

(5) If property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but, in the case of an exchange by two or more persons, this paragraph shall apply only if the

paragraph

amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(6) No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this ~~clause~~ paragraph a distribution shall be considered to be in complete liquidation only if—

(a) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per cent of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(b) No distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and, either

(c) The distribution is by such other corporation in complete cancelation or redemption of all its stock, and the transfer of all the property occurs within the taxable year, in such case the adoption by the stockholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete concelation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of a transfer of the property is specified in such resolution; or

subparagraph

(d) Such distribution is one of the series of distributions by such other corporation in complete cancelation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under ~~clause (6)~~ (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under ~~clause (6)~~ (a) until the completion of such transfer, the assessment and collection of all income, war profits, and excess profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancelation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (1) (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in ~~clause~~ paragraph (4) of this subdivision, and (2) (ii) the complete cancelation or redemption under the plan, as a result of exchanges described in ~~clause~~ paragraph (3) of this subdivision, of the shares not owned by the taxpayer.

subparagraph

Subdivision 2. **Certain gains recognized.** (a) If an exchange would be within the provisions of subdivision 1, ~~clause~~ (1), (2), (3), or (5) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by any such ~~clause~~ to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property. paragraph

(b) If a distribution made in pursuance of a plan of reorganization is within the provisions of ~~clause (a)~~ of this subdivision but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee

paragraph (1)

paragraph (1)

such an amount of the gain recognized under ~~clause (a)~~ as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after December 31, 1932. The remainder, if any, of the gain recognized under ~~clause (a)~~ shall be taxed as a gain from the exchange of property.

paragraph (1)

Subdivision 3. **Limitation on recognition.** If an exchange would be within the provisions of subdivision 1, ~~clause~~ (4), of this section, if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then —

(1) If the corporation receiving such other property or money distributed it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

inclusive

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

Subdivision 4. **Loss from exchange.** If an exchange would be within the provisions of subdivision 1, ~~clauses~~ (1) to (5), of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by ~~any~~ such ~~clause~~ to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

paragraph

Subdivision 5. **Loss from conversion of property.** If property, as a result of *its destruction in whole or in part, theft or seizure, or an exercise of the power of* requisition or condemnation, or the threat or imminence thereof, is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith, in good faith, under regulations prescribed by the commissioner, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

Subdivision 6. **Reorganization and a party to a reorganization.** As used in this section and in section 290.14 —

(1) The term "reorganization" means:

(a) *A statutory merger or consolidation;* or

(b) The acquisition by one corporation, in exchange solely for all or a part of its voting stock; of at least 80 per cent of the voting stock and at least 80 per cent of the total number of shares of all other classes of stock of another corporation, or of substantially all the properties of another corporation; or

(c) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders, or both, are in control of the corporation to which the assets are transferred; or

(d) A recapitalization; or

(e) A mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

Subdivision 7. **Control.** As used in this section, the term "control" means the ownership of stock possessing at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock of the corporation.

[*1933 c. 405 s. 17; Ex. 1937 c. 49 s. 12*] *(2394-17)*

290.14 BASIS FOR DETERMINING GAIN OR LOSS. The basis for determining the gain or loss from the sale or other disposition of property acquired on or after January 1, 1933, shall be the cost to the taxpayer of such property, with the following exceptions:

(1) If the property should have been included in the last inventory, it shall be the last inventory value thereof;

(2) If the property was acquired by gift, it shall be the same as it would be if it were being sold or otherwise disposed of by the last preceding owner not acquiring it by gift; *if the facts required for this determination cannot be ascertained, it* shall be the fair market value as of the date, or approximate date, of acquisition by

such last preceding owner, as nearly as the requisite facts can be ascertained by the commissioner;

(3) If the property was acquired by gift through an inter vivos transfer in trust, it shall be the same as it would be if it were being sold or otherwise disposed of by the grantor;

(4) If the property was acquired by devise, bequest or inheritance, or by the estate of a decedent from such decedent, it shall be the fair market value at the date of the decedent's death, and, for the purpose of this clause, an inter vivos transfer in trust made by the decedent in which he reserved the income, or the control thereof, to himself for his life and a power of revoking the trust, shall be treated as a disposition by will at his death of the property transferred on such trust terms;

(5) If the property was acquired after December 31, 1932, upon an exchange described in section 290.13, subdivisions 1 to 4, the basis, except as provided in clause (6) of this section, shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 290.13, subdivision 1, to be received without the recognition of gain or loss, and in part of other property, the basis provided in this clause shall be allocated between the properties, other than money, received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. This clause shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration, in whole or in part, for the transfer of the property to it;

(6) If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of section 290.13, subdivision 1, clause (6), then the basis shall be the same as it would be in the hands of the transferor;

(7) If subtantially identical property was acquired in the place of stocks or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under section 290.09, clause (4), the basis in the case of property so acquired shall be the same as in the case of the stock or securities so sold or disposed of, increased by the excess of the repurchase price of such property over the sale price of such stock or securities, or decreased by the excess of the sale price of such stock or securities over the repurchase price of such property;

(8) If a taxpayer has received a stock dividend in respect to any stock, the amount that would be the loss or gain basis in disposing of the stock in respect of which such stock dividend was received shall be ratably apportioned over such stock and the stock received as a dividend, and the basis thus arrived at for the original and the dividend stock shall be the basis, respectively, when the original stock or dividend stock is sold or otherwise disposed of;

(9) If the property was acquired after December 31, 1932, by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable in the year in which the transfer was made. This clause shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration, in whole or in part, for the transfer;

(10) If the property was acquired after December 31, 1932, by a corporation—

(a) By the issuance of its stock or securities in connection with a transaction described in section 290.13, subdivision 1, clause (5), including also cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities; or

(b) As paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made;

(11) If the property was acquired after December 31, 1932, as the result of a compulsory or involuntary conversion described in section 290.13, subdivision 5, the

basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law applicable to the year in which such conversion was made, determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

[1933 c. 405 s. 18; Ex. 1937 c. 49 s. 13] (2394-18)

290.15 BASIS FOR DETERMINING GAIN OR LOSS FROM DISPOSITION OF PROPERTY ACQUIRED BEFORE JANUARY 1, 1933. The basis for determining the gain from the sale or other disposition of property acquired before January 1, 1933, (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value). The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933, shall be the cost to the taxpayer adjusted as provided in section 290.12, subdivision 2, for the period prior to January 1, 1933. The basis prescribed by section 290.14 for determining gain or loss with respect to property acquired by gift, by gift through an inter vivos transfer in trust, by devise, bequest or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purpose of this section.

[1933 c. 405 s. 19; Ex. 1937 c. 49 s. 14; 1941 c. 550 s. 9] (2394-19)

290.16 DEDUCTIONS. Subdivision 1. **Basis.** The basis upon which exhaustion, wear, tear, obsolescence, or depletion is to be allowed in respect to any property shall be the same as provided in sections 290.14 and 290.15 for the purpose of determining the loss or gain on the sale or other disposition thereof.

Subdivision 2. **Limitation of deductions; capital assets.** Losses from sales or exchanges of capital assets shall be allowed only to the extent of $2,000, plus the gains from such sales or exchanges. For this purpose the term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 290.09, clause (6), or amortization allowance provided in section 290.09, clause (12).

Subdivision 3. **Amounts received in exchange on retirement of bonds.** For the purposes of this chapter amounts received by the holder upon retirement of bonds, debentures, notes, or certificates or other evidence of indebtedness issued by any corporation (including those issued by the government or political subdivision thereof) with interest coupons or in regular form shall be considered as amounts received in exchange therefor.

[1933 c. 405 s. 20; Ex. 1937 c. 49 s. 15; 1941 c. 550 s. 10] (2394-20)

290.17 GROSS INCOME TO BE ALLOCATED. Items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(1) The entire income of all resident or domestic taxpayers from compensation for labor or personal services, or from a business consisting principally of the performance of personal or professional services, shall be assigned to this state, and the income of non-resident taxpayers from such sources shall be assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources shall be treated as income from sources without this state;

(2) Income and gains received from tangible property not employed in the business of the recipient of such income or gains, and from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, shall be assigned to this state if such property has a situs within it, and to other states only if it has no situs in this state. Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held and whether in trust or otherwise,

shall be assigned to this state if the recipient thereof is domiciled within this state; provided that income or gains from such property held in trust shall be assigned to this state if the recipient of such income is domiciled within this state and such income or gains would be taxable to such recipient under section 290.22, or if the grantor of such trust is domiciled within this state and such income or gains would be taxable to such grantor under section 290.29;

(3) *Income derived from carrying on a trade or business,* including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be assigned to this state if the trade or business is conducted wholly within this state, and to other states if conducted wholly without this state. This provision shall not apply to business income subject to the provisions of clause (1);

(4) When a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business, including income from intangible property employed in such business and including, in the case of a business owned by natural persons, the income imputable to the owner for his services and the use of his property therein, shall be governed, except as otherwise provided in sections 290.35 and 290.36, by the provisions of section 290.19, notwithstanding any provisions of this section to the contrary. This shall not apply to business income subject to the provisions of clause (1).

(5) All other items of gross income shall be assigned to the taxpayer's domicile.

[1933 c. 405 s. 23; Ex. 1937 c. 49 s. 17] (2394-23)

290.18 COMPUTATION OF NET INCOME. The taxable net 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 deductions of the kind permitted by section 290.09 in accordance with the following provisions:

(1) Such deductions shall be allowed to the extent that they are connected with and allocable against the production or receipt of such gross income assignable to this state;

(2) That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries and so far as not entering into the computation of the net income assignable to this state under section 290.19, shall be allowed which the taxpayer's gross income from sources within this state, as determined under section 290.17, clauses (1), (2), (3), and (5), bears to his gross income from all sources, including that entering the computations provided for by section 290.19; provided that taxes of the kind deductible under section 290.09, clause (3), shall, so far as within the description of deductions deductible under this clause, be deductible in their entirety if paid to the State of Minnesota, or any of its subdivisions authorized to impose such taxes, and thereupon be excluded in making the computation of deductions, as in this clause provided;

(3) No deduction shall be allowed under this section unless the taxpayer, when requested by the commissioner, shall furnish him with information sufficient to enable him to determine the validity and correctness of such deductions.

[1933 c. 405 s. 24] (2394-24)

290.19 ALLOCATION OF TAX. Subdivision 1. **Computation when business conducted partly within state; apportionment.** The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deduction of the kind permitted by section 290.09 so far as connected with or allocable against the production or receipt of such income. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the manufacture in Minnesota or within and without Minnesota of personal property and the sale of said property within and without the state, the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state and through, from or by offices, agencies, branches or stores within this state is of the total sales wherever made;

(b) The percentage which the total tangible property, real, personal, and mixed, owned or used by the taxpayer in this state in connection with such trade or business is of the total tangible property real, personal, or mixed, wherever located, owned, or used by the taxpayer in connection with such trade or business; and,

(c) The percentage which the taxpayer's total pay-rolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total pay-rolls paid or incurred in connection with such entire trade or business;

(d) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 per cent of the percentage determined under clause (1) (a), 15 per cent of the percentage determined under clause (1) (b), and 15 per cent of the percentage determined under clause (1) (c);

(2) (a) In all other cases the proportion of such remainder to be assigned to this state shall be that which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted;

(b) If the methods prescribed under clause (2) (a) will not properly reflect taxable net income assignable to the state, there shall be used, if practicable and if such use will properly and fairly reflect such income, the arithmetical average of the three percentages set forth in clauses (1) (a), (1) (b), and (1) (c), of this section, or the separate or segregated accounting method;

(3) The sales pay-rolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used by the taxpayer during the taxable year in respect of which the tax is being computed;

(4) For the purposes of this section, in determining the amount of sales made within Minnesota, there shall be excluded therefrom sales negotiated or effected in behalf of the taxpayer by agents or agencies chiefly situated at, connected with, or sent out from premises for the transaction of business owned or rented by the taxpayer or by his agents or agencies outside the state and sales otherwise determined by the commissioner to be attributable to the business conducted on such premises. If the commissioner finds that the taxpayer maintains an office, warehouse or other places of business outside the state for the purpose of reducing its tax under this section it shall in determining the amount of taxable net income include therein the proceeds of sales attributed by the taxpayer to the business conducted at such place outside the state.

Subdivision 2. **Application of methods.** The methods prescribed by subdivision 1 shall apply wherever and in so far as the business carried on within this state is an integral part of a business carried on both within and without this state.

Subdivision 3. **Application of sections 290.17 and 290.18.** Nothing in this section shall prevent the application of sections 290.17 and 290.18 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without this state.

[*1933 c. 405 s. 25; 1939 c. 446 s. 22; 1941 c. 550 s. 20*] *(2394-25)*

290.20 COMMISSIONER TO PRESCRIBE METHODS. The methods prescribed by section 290.19 shall be presumed to determine fairly and correctly the taxpayer's net income allocable to this state. Any taxpayer feeling aggrieved by the application to his case of the methods so prescribed may petition the commissioner for determination of such taxable net income on some other basis, including separate accounting. Thereupon, if the commissioner, upon the petition of the taxpayer, finds that the application of the methods prescribed by section 290.19 will be unjust to the taxpayer, he may allow the use of the methods proposed by the taxpayer, or may determine the taxable net income by other methods if satisfied that such methods will fairly reflect the taxable net income properly assignable to this state.

[*1933 c. 405 s. 26; Ex. 1937 c. 49 s. 29; 1939 c. 446 s. 23*] *(2394-26)*

290.21 CREDITS AGAINST TAX. The taxes imposed by this chapter shall be on, or measured by, as the case may be, the taxable net income less the following credits against it:

(1) A credit of $1,000 in the case of each corporation;

(2) An amount for contributions or gifts made within the taxable year:

(a) To the State of Minnesota, or any of its political subdivisions, for exclusively public purposes;

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

(c) To a fraternal society, order, or association, operating under the lodge system, if such contributions or gifts are to be used within this state exclusively for the purposes specified in clause (2) (b), or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual; but the total credit against net income hereunder ~~shall not exceed 15 per cent of the taxpayer's taxable net income;~~

(3) Dividends received by a corporation during the taxable year from another corporation, if the recipient owns 80 per cent or more of all the voting stock of such other corporation, from income arising out of business done in this state by the corporation paying such dividends; but, if the income out of which the dividends are declared was derived from business done within and without this state, then so much of the dividends shall be allowed as a credit as the amount of the taxable net income of the corporation paying the dividends assignable to this state bears to the entire net income of the corporation, such rate being determined by the returns under this chapter of the corporation paying such dividends for the taxable year preceding the distribution thereof; the burden shall be on the taxpayer of showing that the amount of dividends claimed as a credit has been received from income arising out of business done in this state;

(4) To each mutual savings bank organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid or credited during the taxable year of its depositors;

(5) To each mutual investment company, as defined by the United States internal revenue code, section 361, an amount equal to the interest and dividends paid during the taxable year, and to each building and loan and savings and loan association, an amount equal to the dividends paid during the taxable year to its members as members.

[*1933 c. 405 s. 27; Ex. 1937 c. 49 s. 18; 1939 c. 446 s. 8; 1941 c. 550 s. 21*] *(2394-27)*

290.22 APPLICATION. The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including:

(1) Income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and,

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

The tax shall be computed upon the net income of the estate or trust and paid by the fiduciary, except as provided in section 290.27, relating to revocable trusts, and section 290.28, relating to income for benefit of the grantor.

[*1933 c. 405 s. 28; 1939 c. 446 s. 9*] *(2394-28)*

290.23 ESTATES OR TRUSTS; COMPUTATION; CREDITS; DEDUCTIONS. The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that:

(1) There shall be allowed as a credit (in lieu of the credit for charitable and other contributions authorized by section 290.21, clause (2)), any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 290.21, clause (2), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit; Am 1943-c.6-12

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for

its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries domiciled within this state whether distributed to them or not; any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under clause (3) of this section in the same or any succeeding taxable year;

(3) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary, to the extent that such amount is properly includible in computing the taxable net income of such legatee, heir, or beneficiary under the provisions of this chapter.

[1939 c. 446 s. 10; 1941 c. 500 s. 12] (2394-28a)

290.24 ESTATES OR TRUSTS; PERSONAL CREDIT. An estate shall be allowed the same personal credit against the tax as is allowed to a single person under section 290.06, subdivision 3, clause (1).

[1939 c. 446 s. 10; 1941 c. 550 s. 23] (2394-28b)

290.25 RULE WHEN TAXABLE YEAR DIFFERS. If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 290.22, subdivision 2, to include in computing his net income shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1939) ending within or with his taxable year.

[1939 c. 446 s. 10] (2394-28c)

290.26 COMPUTATION OF NET INCOME OF ESTATE OR TRUST. A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees:

(1) If contributions are made to the trust by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan;

(2) If under the trust instrument it is impossible, at any time prior to the satisfatcion of all liabilities with respect to employees under the trust, for any part of the corpus or income to be, within the taxable year or thereafter, used for, or diverted to, purposes other than for the exclusive benefit of his employees, shall not be taxable under section 290.22, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him.

The provisions of clause (2) shall not apply to a taxable year beginning before January 1, 1939.

[1939 c. 446 s. 10] (2394-28d)

290.27 REVOCABLE TRUSTS. Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor.

[1939 c. 446 s. 10] (2394-28e)

290.28 RESERVATION OF INCOME BY GRANTOR. Where any part of the income of a trust

(1) Is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) May, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) Is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be,

applied to the payment of premiums upon policies of insurance on the life of the grantor, except policies of insurance irrevocably payable for the purposes and in the manner specified in section 290.21, clause (2), relating to the so-called "charitable contribution" deduction; then such part of the income of the trust shall be included in computing the net income of the grantor.

As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

[1939 c. 446 s. 10] (2394-28f)

290.29 TRANSFEREES AND FIDUCIARIES. The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter, including all provisions of the chapter for the collection of taxes:

(1) The liability, at law or in equity, of a transferee of property of a taxpayer in respect of the tax, including interest, additional amounts, and additions to the tax provided by law, imposed upon the taxpayer by this chapter;

(2) The liability of a fiduciary under section 290.54, subdivision 1, in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax. Am 1947-636-1

The period of limitation for assessment of any such liability of the transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three and one-half years after the expiration of the period of limitation for assessment against the taxpayers; except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding;

(3) In the case of the liability of a fiduciary, not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

In the absence of notice to the commissioner under section 290.30 of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purpose of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

[1933 c. 405 s. 29; 1939 c. 446 s. 11] (2394-29)

290.30 FIDUCIARY TO PAY TAX. Upon notice to the commissioner that any person is acting in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter, except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer, until notice is given that the fiduciary capacity has terminated.

Upon notice to the commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 290.29, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section, except that the liability shall be collected from the estate of such person, until notice is given that the fiduciary capacity has terminated.

Notice under this section shall be given in accordance with regulations prescribed by the commissioner.

[1939 c. 446 s. 12] (2394-29a)

290.31 PARTNERSHIPS NOT TAXED. The tax imposed by this chapter shall not be imposed on partnerships; but the distributive share, whether distributed or not, of each partner in the taxable net income of the partnership for its taxable year ending during such partner's taxable year shall be included in computing such partner's taxable net income.

The taxable net income of the partnership shall be assigned to this state under sections 290.17 to 290.36 and 290.37 to 290.39.

Each partner shall be allowed as a credit against his taxable net income his proportionate part of the contributions or gifts that are within section 290.21, clause (2), made by the partnership during its taxable year, but the sum of this latter credit allowed hereunder and that allowed the partner under section 290.21, clause (2), shall not exceed the limit therein specified.

The taxable net income of a partnership which a partner is required hereunder to take into his taxable net income shall be taxed at the rates applicable to the partner's taxable year during which he is required to include it in his taxable net income.

[1933 c. 405 s. 30; Ex. 1937 c. 49 s. 20; 1939 c. 446 s. 13] (2394-30)

290.32 TAXES FOR PART OF YEAR. When under this chapter a taxpayer is permitted or required to make a return for a fractional part of a year, the tax shall be computed in the same manner as if such fractional part of a year were an entire year. This shall not apply to cases within this section.

When a taxpayer is permitted to change the basis for reporting his income from a fiscal to a calendar year, he shall make a separate return for the period between the close of his last fiscal year and the following December thirty-first; if the change is from a calendar to a fiscal year, a separate return shall be made for the period between the close of his last calendar year and the date designated as the close of the fiscal year; and if the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. The taxable net income for any such period shall be put on an annual basis by multiplying the amount thereof by 12 and dividing by the number of months included in the period for which such separate return is made; and the tax shall be that part of a tax, computed on the taxable net income put on such annual basis, less the credit against that taxable net income under the provisions of section 290.21, which the number of months in such period bears to 12 months.

[1933 c. 405 s. 31] (2394-31)

290.33 TAXABLE YEAR EXTENDING INTO CALENDAR YEARS AFFECTED BY DIFFERENT LAWS. The tax imposed on a taxpayer for a period beginning in one calendar year, hereinafter called "first calendar year," and ending in the following calendar year, hereinafter called "second calendar year," when the law applicable to the first calendar year is different from the law applicable to the second calendar year, shall be the sum of that proportion of a tax for the entire period, computed under the law applicable to the first calendar year, which the portion of such period falling within the first calendar year is of the entire period, and that proportion of a tax for the entire period, computed under the law applicable to the second calendar year, which the portion of such period falling within the second calendar year is of the entire period.

[1933 c. 405 s. 31-1; Ex. 1937 c. 49 s. 21] (2394-32a)

290.34 SPECIAL PROVISIONS FOR CORPORATIONS. Subdivision 1. **Conducting business in such a way as to create losses or improper net income.** When any corporation liable to taxation under this chapter conducts its business in such a manner as, directly or indirectly, to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodities or services in which it deals at less than the fair price which might be obtained therefor, or buying such commodities or services at more than the fair price for which they might have been obtained, or when any corporation, a substantial portion of whose shares is owned directly or indirectly by another corporation, deals in the commodities or services of the latter corporation in such a manner as to create a loss or improper net income or to reduce the taxable net income attributable to this state, the commissioner of taxation may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income or the overstatement of its losses, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business.

Subdivision 2. **Consolidated returns required to determine income of affiliated corporations.** When a corporation which is required to file an income tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or has its income regulated through contract or other arrangement, the commissioner of taxation may permit or require such consolidated statements as, in his opinion, are necessary in order to determine the taxable net income received by any one of the affiliated or related corporations.

Subdivision 3. **Consolidated returns allowed in certain cases.** An affiliated group of corporations, all the members of which are required to file income tax returns under the provisions of this chapter, shall have the privilege of filing a consolidated return in lieu of separate returns, if the entire income of each of the members of the affiliated group including the common parent, if any, is assignable to this state under the provisions of this chapter. In the case of a corporation which is a member of the affiliated group for a fractional part of the taxable year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group. Only one credit provided by section 290.21, clause (1), shall be allowed in computing the tax on such consolidated return. The consolidated net income of the affiliated group shall be determined in accordance with such regulations as the commissioner may prescribe. As used in this subdivision, an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if (1) at least 90 per cent of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and (2) the common parent corporation owns directly 90 per cent of the stock of at least one of the other corporations; and (3) each of the corporations is either (a) a corporation whose principal business is that of a common carrier by railroad or (b) a corporation, the assets of which consist principally of stock in such corporation, and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this subdivision, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this section, the term "stock" does not include non-voting stock which is limited and preferred as to dividends.

Subdivision 4. **Application of section.** This section shall apply to the determination and assessment of taxes for all taxable years beginning after December 31, 1940.

[1933 c. 405 s. 32; 1941 c. 458; 1941 c. 550 s. 13] (2394-32)

290.35 INSURANCE COMPANIES; REPORT OF NET INCOME; COMPUTATION OF AMOUNT OF INCOME ALLOCABLE TO STATE. The taxable net income of insurance companies taxable under this chapter shall be computed as follows:

Each such company shall report to the commissioner the net income returned by it for the taxable year to the United States under the provisions of the act of congress, known as the revenue act of 1936, or that it would be required to return as net income thereunder if it were in effect. The commissioner shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business; provided, the commissioner shall add to the taxable net income so apportioned to this state the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge or premiums imposed by sections 69.54 to 69.57) which shall have been deducted from gross income by the company in arriving at its total net income under the provisions of such act of congress.

[1933 c. 405 s. 32-2; Ex. 1937 c. 49 s. 21] (2394-32b)

290.36 INVESTMENT COMPANIES; REPORT OF NET INCOME; COMPUTATION OF AMOUNT OF INCOME ALLOCABLE TO STATE. The taxable net income of investment companies shall be computed and be exclusively as follows:

Each investment company transacting business as such in this state shall report to the commissioner the net income returned by the company for the taxable year to the United States under the provisions of the act of congress known as the revenue act of 1936, less the credits provided therein, or the net income that such company would be required to return under such act less such credits, if such act were in effect. The commissioner shall compute therefrom the taxable net income of the investment company by assigning to this state that proportion of such net income, less such credits which the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of this state, bears to the total amount of the gross payments collected during such year by the company from such business upon investment contracts issued by the company and held by persons residing within the state and elsewhere.

As used in this section, the term "investment company" means any person, copartnership, association, or corporation, whether local or foreign, coming within the purview of section 54.26, who or which solicits payments to be made to himself or itself and issues therefor so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof money or anything of value at some future date; and the term "investment contract" shall mean any such so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement issued by an investment company.

[1933 c. 405 s. 32-3; Ex. 1937 c. 49 s. 21] (2394-32c)

290.361 TAX ON INCOME OF NATIONAL BANKS. An excise tax measured by net income is hereby imposed on national and state banks by this chapter and shall be governed by the provisions of section 290.02, and the taxable net income shall be computed in the manner provided by this chapter except that in the case of national and state banks the rate shall be eight per cent instead of six per cent and the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940, instead of January 1, 1933.

The state is hereby adopting the method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of the Revised Statutes of the United States.

The revenues derived from the excise tax on banks shall be paid into the state treasury and credited to a special fund, from which shall be paid all refunds of taxes erroneously collected from banks as certified by the commissioner. The balance of this fund shall be transmitted, on the last days of May and November of each year, to the respective counties in which are located the banks paying the tax. The county auditor shall apportion and distribute the respective amounts paid by each bank in his county, less refunds paid to that bank, in the same manner and on the same basis as he distributes taxes on personal property in the taxing district in which that bank is located.

The tax hereby imposed upon national and state banks shall be in lieu of all taxes upon the capital, surplus, property, assets, and shares of these banks, except taxes imposed upon real property.

[1941 c. 18 s. 1]

290.362 TAX, HOW COMPUTED. By reason of the adoption of method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of Revised Statutes of the United States whereby a state may impose an excise tax upon national banks, and the state having elected, in section 290.361, to impose such tax, every taxpayer taxable under this chapter must include in gross income dividends received from national banks (to the extent permitted by section 5219) and dividends from state banks in the same manner and to the same extent as other dividend income is includible in gross income for the purpose of computing his taxable net income.

[1941 c. 18 s. 2]

290.363. EFFECTIVE JANUARY 1, 1940; TAXES REFUNDED IN CERTAIN CASES. Laws 1941, Chapter 18, shall take effect as of January 1, 1940. The first return thereunder shall be for the calendar year 1940 and shall be filed on March 15, 1941, or within 30 days after the enactment thereof, whichever is later. The collection and enforcement of all taxes assessed or levied upon the shares of national and state banks for the year 1940 is hereby suspended during the period sections 290.361 to 290.363 shall be in force and if any tax so levied shall have been paid it shall be refunded.

[1941 c. 18 s. 3] Am 1947, 636-14

290.37 WHO SHALL MAKE RETURNS. The following persons shall make a return under oath for each taxable year, or fractional part thereof where permitted or required by this chapter:

(1) Individuals with respect to their own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credit allowed, or if their gross income exceeds $5,000;

(2) The executor or administrator of the estate of a decedent with respect to the taxable net income of such decedent for that part of the taxable year during which he was alive, if such taxable net income exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such decedent's gross income for the aforesaid period exceeds $1,000;

(3) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such estate's gross income exceeds $1,000;

(4) The trustee or other fiduciary of property held in trust with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed; or if the gross income of such trust exceeds $1,000; if, in either case, such trust belongs to the class of taxable persons;

(5) The guardian of an infant or other incompetent person, with respect to such infant's or other person's taxable net income if that exceeds an amount on which a tax at the rates provided herein would exceed the specific credit allowed, or if their gross income exceeds $1,000;

(6) Every corporation with respect to its taxable net income if in excess of $1,000, or if its gross income exceeds $5,000; the return in this case shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer;

(7) The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or, if the taxpayer is a corporation, if the taxable net income exceeds $1,000, or if such taxpayer's gross income exceeds $5,000.

[1933 c. 405 s. 33; Ex. 1937 c. 49 s. 32] (2394-33)

290.38 MARRIED WOMEN MAY MAKE SEPARATE RETURNS. A married woman living with her husband may file a separate return of her own income, or she may include the income received by her during any year during any part of which she lived with her husband, in the return of her husband. In the latter case the tax shall be computed on the basis of the combined taxable net income and there shall be allowed as a credit against such taxable net income gifts or contributions within section 290.21 made by the husband or by her while living with him, subject to the limit therein contained. A woman who was married during only a part of a year shall, if during any part of such year she lived with her husband, treat all her income for such year in accordance with one of the methods herein referred to.

[1933 c. 405 s. 34] (2394-34)

290.39 RETURN; FORM; FILING. Every return shall specifically set forth the items of gross income, deductions, credits against net income, and any other data necessary for computing the amount of any item required for determining the amount of the tax. The return shall be in such form as the commissioner of taxation may prescribe as necessary to determine the amount of the tax. The filing of a return required under this section shall be deemed an assessment subject to revision of the tax shown due on the basis of such return.

[1933 c. 405 ss. 35, 36] (2394-35) (2394-36)

290.40 SHALL BE ANNUAL RETURN; EXCEPTIONS. The returns shall cover a 12-month period, except in the following cases:

(1) The return made by or for any taxpayer who was in existence for less than the whole of a taxable year shall cover that part of the taxable year during which such taxpayer was in existence;

(2) A taxpayer who changes from one taxable year to another shall make a return from the fractional parts of a year, as specified in section 290.32.

[1933 c. 405 s. 37] (2394-37)

290.41 RETURNS NECESSARY TO BE MADE. Subdivision 1. **By partnerships.** Partnerships shall make a return for each taxable year which shall conform in every respect to the requirements of section 290.39, and shall, in addition, include the names and addresses of all partners entitled to a distributive share in their taxable net income and the amount of such distributive share to which each is entitled. The return shall be sworn to by one of the partners.

Subdivision 2. **By persons or corporations.** Every person or corporation making payments during the taxable year to any person or corporation in excess of $500.00 on account of rents, or in excess of $100.00 on account of interest or dividends, or in excess of $1,000 on account of either wages, salaries, or commissions, shall make a return in respect to such payments in excess of the amounts specified, giving the names and addresses of the persons to whom such payments were made, the amounts paid to each. The state treasurer or other corresponding officer, by whatever name known, of every political subdivision of the state, of every city, village, or borough and of every school district, shall, on or before the first day of March each year, beginning with March, 1938, make and file with the commissioner of taxation a report giving the name of each employee or official to whom the state or such political subdivision, city, village, borough, or school district, during the preceding calendar year, paid any salary or wages in excess of $1,000, together with the last known address of such employee or official.

Subdivision 3. **By brokers.** The commissioner of taxation may require brokers to furnish him with the names of customers for whom they have transacted business, and with such details as to transactions of any customer as will enable him to determine whether all income due on profits or gains of such customers has been paid.

Subdivision 4. **By agents.** The commissioner may require any person acting as agent for another to make a return giving such information as may be reasonably necessary to properly assess and collect the tax imposed by this chapter upon the person for whom he acts.

[1933 c. 405 s. 38; Ex. 1937 c. 49 s. 22; 1941 c. 550 s. 14] (2394-38)

290.42 DATE OF FILING. The returns required to be made under sections 290.37 to 290.39 and 290.41, other than those under section 290.41, subdivision 2, which shall be made within 30 days after demand therefor by the commissioner, shall he filed at the following times:

(1) Returns made on the basis of the calendar year shall be filed on the fifteenth day of March, following the close of the calendar year;

(2) Returns made on the basis of the fiscal year shall be filed on the fifteenth day of the third month following the close of such fiscal year;

(3) Returns made for a fractional part of a year as an incident to a change from one taxable year to another shall be filed on the fifteenth day of the third month following the close of the period for which made;

(4) Other returns for a fractional part of a year shall be filed on the fifteenth day of the third month following the end of the month in which falls the last day of the period for which the return is made;

(5) In case of sickness, absence, or other disability, or when, in his judgment, good cause exists, the commissioner may extend the time for filing these returns for not more than six months, except that where the failure is due to absence outside the United States he may extend the period until 30 days after the taxpayer's return to this state. He may require each taxpayer in any of such cases to file a tentative return at the time fixed for filing the regularly required return from him, and to pay a tax on the basis of such tentative return at the times required for the payment

of taxes on the basis of the regularly required return from such taxpayer. The commissioner may exercise his power under this clause by general regulation only.

[1933 c. 405 s. 39; Ex. 1937 c. 49 s. 23] (2394-39)

290.43 WHERE FILED. The returns required to be made under sections 290.37 to 290.39 and 290.41 shall be filed with the commissioner at his office in St. Paul or at such local offices in the county of the residence or principal place of business of the taxpayer as the commissioner of taxation may designate. If designated by the commissioner of taxation, the treasurer of each county shall receive such return and payments of taxes thereon and transmit the same to the commissioner of taxation within ten days and in such case his bond as county treasurer shall cover any defalcations in connection therewith. No county treasurer shall be required to assist in making out or swearing to such returns.

[1933 c. 405 s. 40] (2394-40)

290.44 PAYMENT OF TAX; EXCEPTIONS. The taxes imposed by this chapter, and interest and penalties imposed with respect thereto, shall be paid by the taxpayer upon whom imposed, except in the following cases:

(1) The tax due from a decedent for that part of the taxable year in which he died during which he was alive shall be paid by his executor or administrator;

(2) The tax due from an infant or other incompetent person shall be paid by his guardian or other person authorized or permitted by law to act for him;

(3) The tax due from the estate of a decedent shall be paid by the executor or administrator thereof;

(4) The tax due from a trust, including those within the definition of corporation, shall be paid by the trustee or trustees;

(5) The tax due from a taxpayer whose business or property is in charge of a receiver, trustee in bankruptcy, assignee, or other conservator, shall be paid by the person in charge of such business or property.

[1933 c. 405 s. 41] (2394-41)

290.45 TAX TO BE PAID WHEN RETURN FILED. Subdivision 1. **May be paid in instalments.** All taxes imposed by this chapter shall be paid at the time fixed for filing the return on which the tax is based, except that they may, at the election of the taxpayer, be paid in two equal instalments, the first of which shall be paid at the time above specified, and the second on or before six months thereafter. With respect to all such taxes payable after January 1, 1942, when the amount due from any taxpayer is $30.00 or more, any such taxpayer may elect to pay the tax in four equal instalments in which case the first instalment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second instalment shall be paid on the 15th day of the third month, the third instalment on the 15th day of the sixth month, and the fourth instalment on the 15th day of the ninth month, after such date. If any instalment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.

Subdivision 2. **Time for payment may be extended.** At the request of the taxpayer, and for good cause shown, the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any instalment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an instalment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

[1933 c. 405 s. 42; 1941 c. 335; 1941 c. 550 s. 15] (2394-42)

290.46 SHALL EXAMINE TAXPAYERS' RECORDS. The commissioner shall, as soon as practicable after the return is filed, examine the same and make any investigation or examination of the taxpayer's records and accounts that he may deem necessary for determining the correctness of the return. The tax computed by him on the basis of such examination and investigation shall be the tax to be paid by such taxpayer. If the tax found due shall be greater than the amount reported as due on the taxpayer's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the commissioner within 30 days after notice of the amount and demand for its payment shall have been mailed to the taxpayer by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the instalments of the tax shown by the taxpayer on his return which have not yet been paid shall be paid to the commissioner within 30 days after notice of the amount thereof and demand for payment shall have been mailed to the taxpayer by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the taxpayer's return, the excess shall be refunded to the taxpayer in the manner provided by section 290.50 (except that no demand therefor shall be necessary), if he has already paid the whole of such tax, or credited against any unpaid instalment thereof; provided, that no refundment shall be made except as provided in section 290.50, after the expiration of three and one-half years after the filing of the return.

The notices and demands provided for by sections 290.46 to 290.48 shall contain a brief statement of the computation of the tax and shall be sent by registered mail to the taxpayer at the address given in his return, if any, and if no such address is given, then to his last known address.

[1933 c. 405 s. 43; 1939 c. 446 s. 21] (2394-43)

290.47 FAILURE TO MAKE RETURN OR PAY TAX. If any person or corporation required by this chapter to file any return shall fail to do so within the time prescribed by this chapter or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false, or fradulent return, he shall, on the written demand of the commissioner, file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within that time to file such return, or corrected return, the commissioner shall make for him a return, or corrected return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within ten days after the commissioner has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

[1933 c. 405 s. 44; Ex. 1937 c. 49 s. 30; 1941 c. 550 s. 16] (2394-44)

290.48 COLLECTION OF TAX. Subdivision 1. **Action.** If a tax imposed by this chapter, including penalties therein, or any portion of such tax, is not paid within 30 days after it is required to be paid thereunder, the commissioner shall, unless he proceeds under the provisions of subdivision 2 hereof, bring against the person liable for payment thereof an action at law, in the name of the state, for the recovery of the tax and interest and penalties due in respect thereof under this chapter. Such action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the taxpayer, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by the taxpayer shall be conclusive against the taxpayer in this matter. If no such place is named in the return such action may be commenced in Ramsey county. Such action shall be commenced by filing with the clerk of such court a statement showing the name and address of the taxpayer, if known, an itemized summary of the taxable net income on the basis of which the tax has been computed, the tax due and unpaid thereon and the interest and penalties due with respect thereto under the provisions of this chapter, and shall contain a prayer that the court adjudge the taxpayer to be indebted on account of such taxes, interest, and penalties in the amount thereof specified in the statement; a copy of such statement shall be furnished to the clerk therewith. The clerk shall mail a copy of the statement by registered mail to the taxpayer at the address given in the return, if any; and, if no such address is given, then at his last known address, within five days after the same is filed, except that, if the taxpayer's address is not known, notice to him shall be made by posting copy of the statement for ten days in the place in the court-house where public notices are regularly posted. The taxpayer shall, if he desires to litigate the claim, or any part thereof, file a verified answer with the clerk setting forth his objections to the claim, or any part thereof; the answer shall be filed on or before the lapse of the twentieth day after the date of mailing the statement; or, if notice has been given by posting, on or before the twentieth day after the expiration of the period during which the notice was required to be posted. If no answer is filed within the specified time, the court shall enter judgment for the state in the amount prayed for, plus costs of $10.00. If an answer be filed, the issues raised shall stand for trial as soon as possible after the filing of the answer, and the court shall determine the issues and direct judgment accordingly; and, if the taxes, interest, or penalties are sustained to any extent over the amount rendered by the taxpayer, shall assess $10.00 costs against the taxpayer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The commissioner may call upon the county attorney or the attorney general to conduct such proceedings on behalf of the state. Execution shall be issued upon the judgment at the request of the commissioner, and such execution shall, in all other respects, be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon such execution.

Subdivision 2. **Warrant issued to sheriff.** If a tax imposed by this chapter, or any portion of such tax, is not paid within 30 days after it is required to be paid thereunder, and if, for want of power in the State of Minnesota to impose a personal liability for such tax, interest, or penalties upon the taxpayer or to obtain jurisdiction of his person for purposes of rendering against him a personal judgment for the amount of any such tax, interest, or penalties, or for any other reason the proceedings authorized by subdivision 1 hereof shall be impossible, then the commissioner shall issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, except the homestead and household goods of the taxpayer, and shall sell so much thereof as is required to satisfy such taxes, interest, and penalties, together with his costs; but such sales shall, as to their manner, be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain such part thereof as is required to satisfy the tax, interest, penalties, and costs, and pay over any balance to the taxpayer. The commissioner shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer, at his last known address, a written notice of the amount of taxes, interest, and penalties due from the taxpayer and demand for their payment.

Subdivision 3. **When delay jeopardizes collection.** The commissioner may also proceed under the provisions of subdivision 2 hereof when he has reasonable grounds for believing that the collection of any taxes, interest, or penalties due under this chapter will be jeopardized by delays incident to other methods of collection; and, if such cases, no preliminary notice and demand shall be required.

Subdivision 4. **When taxpayer is about to remove from state.** If the commissioner has reasonable grounds for believing that a taxpayer is about to remove himself or his property from this state with the purpose of evading the tax imposed by this chapter, he may immediately declare the taxpayer's taxable year at an end and assess a tax on the basis of his own knowledge or information available to him, mail the taxpayer written notice of the amount thereof, at his last known address, demand its immediate payment; and, if payment is not immediately made, collect the tax by the method prescribed in subdivision 2 hereof, except that it need not await the expiration of the periods of time therein specified.

Subdivision 5. **Action in equity.** In addition to all other methods authorized for the collection of the tax, it may be collected in an ordinary action at law or in equity by the state against the taxpayer.

Subdivision 6. **Appeal to supreme court.** Either party to an action for the recovery of any taxes, interest, or penalties under subdivision 1 or subdivision 5 hereof may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

Subdivision 7. **Injunction forbidden.** No suit shall lie to enjoin the assessment or collection of any taxes imposed by this chapter, or the interest and penalties imposed thereby.

Subdivision 8. **Presumption of validity.** The tax, as assessed by the commissioner, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its incorrectness or invalidity. The statement filed by the commissioner with the clerk of court, as provided herein, or any other certificate by the commissioner of the amount of the tax and penalties as determined or assessed by him, shall be admissible in evidence and shall establish prima facie the facts set forth therein. *[1933 c. 405 s. 45] (2394-45)*

290.49 ASSESSMENT OF TAX. Subdivision 1. **Limitation; notice of assessment.** The amount of taxes assessable with respect to all taxable years ending after January 1, 1937, shall be assessed within three and one-half years after the return is filed. Such taxes shall be deemed to have been assessed within the meaning of this section when the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto; and, if the amount is found to be in excess of that originally declared on the return, when the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by registered mail to the post-office address given in the return, and the record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Subdivision 2. **Decedent; dissolution of corporation.** In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three and one-half years after the return was filed. This subdivision shall not apply in the case of a corporation unless

(1) Such written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of such 18-month period; and

(2) The dissolution is in good faith begun before the expiration of such 18-month period; and

(3) The dissolution is completed.

Subdivision 3. **Omission from gross income.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per cent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

Subdivision 4. **Omission by corporation.** If the taxpayer omits from gross income an amount properly includible therein under section 290.01, subdivision 21, clause (4), as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within four years after the return was filed.

Subdivision 5. **Presumption as to time of filing.** For the purposes of subdivisions 1 to 4, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Subdivision 6. **False or fraudulent return.** In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Subdivision 7. **Limitation in certain cases.** Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun within four years after the return was filed, or within six months after the expiration of the period agreed upon by the commissioner and the taxpayer, pursuant to the provisions of subdivision 8 hereof.

Subdivision 8. **Limitation after examination of taxpayer's books.** In the case of a corporation, if before the expiration of the time prescribed by subdivision 1 hereof for the assessment of the tax, and if the commissioner has effected an examination of the taxpayer's return and supporting books and records, and has prepared a proposed redetermination of the tax liability and mailed a copy of its proposed redetermination to the taxpayer and has afforded the taxpayer an opportunity to appear before him and duly protest such redetermination, and if the commissioner and the taxpayer are unable to agree upon the correct tax liability because of a disagreement as to a material fact or point of law, then, before the expiration of the time prescribed by subdivision 1 hereof for the assessment of the tax, the commissioner and the taxpayer may consent in writing to the assessment of the tax, and the tax, not exceeding the amount of the proposed redetermination herein provided for, may be assessed at any time prior to the expiration of the time agreed upon.

[1933 c. 405 s. 46; Ex. 1936 c. 87 s. 1; Ex. 1937 c. 49 s. 24; 1939 c. 59 s. 2; 1939 c. 446 s. 14; 1941 c. 550 s. 17] (2394-46) Am 1943-656-16

290.50 REFUNDMENT OF OVERPAYMENTS. Subdivision 1. **Claim for refund of excess.** A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in section 290.48, subdivisions 1 and 5) an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for the refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer. Upon the filing of a claim the commissioner shall examine the same and make and file written findings thereon denying or allowing the claim in whole or in part and mail a notice thereof by registered mail to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of three per cent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this chapter, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose. Am 1943 656 - 16

Subdivision 2. **Claim denied; action against commissioner.** If the claim is denied in whole or in part, the taxpayer may commence an action against the commissioner to recover any overpayments of taxes claimed to be refundable but for which the commissioner has issued no certificate of refundment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or, if an estate or trust, of the principal place of its administration, or in the district court for Ramsey county. Such action may be commenced after the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. If the commissioner has not acted within two years after the claim is filed, it shall be considered denied. Am 1943-6[illegible]

Subdivision 3. **Appeal to supreme court.** Either party to the action may appeal to the supreme court as in other cases.

Subdivision 4. **Certificate of refundment.** In any case where the commissioner shall have determined the tax liability of any corporation, and any taxpayer stockholder of such corporation, upon such determination of such corporation's tax liability, became entitled to a credit against his taxable net income on account of dividends received during the taxable year under the provision of Laws 1933, Chapter 405, Section 27, Subdivision (g), for any of the years during which subdivision (g) was in effect, the commissioner shall, provided that the taxpayer has filed a claim for refund on or before December 31, 1939, issue his certificate for refundment of the excess, if any, which such taxpayer has paid over and above the amount which the taxpayer would have been liable to pay after the allowance of such dividend credit, with interest at the rate of three per cent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, and the state auditor shall cause such refund to be paid in the manner prescribed in subdivision 1 hereof; and if the commissioner shall fail, within 90 days after the filing of such claim by the taxpayer, to issue such certificate, the taxpayer may sue the commissioner for such overpayment at any time thereafter but not more than two years after the passage of this section.

[1933 c. 405 s. 47; 1939 c. 446 ss. 15, 19; 1941 c. 550 ss. 18, 22] (2394-47)

290.51 AGREEMENTS. Subdivision 1. **Authority to make.** The commissioner, or any officer or employee of the state income tax department authorized in writing by the commissioner, is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person or estate for whom he acts, in respect of any state income and franchise tax for any taxable period ending prior to the date of the agreement.

Subdivision 2. **Approval.** If such agreement is approved by the commissioner within such time as may be stated in the agreement, or later agreed to, such agreement shall be final and conclusive; and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the state; and, in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

[*1939 c. 446 s. 18*] *(2394-50a)*

290.52 ADMINISTRATION AND ENFORCEMENT. The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this chapter. He may, from time to time, make and publish such rules and regulations in enforcing its provisions. He shall cause to be prepared blank forms for the returns required by this chapter, which shall include a simplified form for individual taxpayers having a gross income less than $5,000, which statement shall be verified or sworn to by the taxpayer, listing gross income, deductions, net income, gross tax, personal credits, and tax payable; provided that detailed returns may subsequently be required of such persons by the commissioner. He shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this chapter. The commissioner may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commissioner, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their cases. The commissioner may, after due notice and opportunity for hearing, suspend and disbar from further practice before him, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with such rules and regulations, or who shall, with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or the officers of corporations to appear in behalf of their respective partnerships or corporations.

[*1933 c. 405 s. 50; Ex. 1937 c. 49 s. 27; 1939 c. 446 s. 17*] *(2394-50)*

290.53 PENALTIES. Subdivision 1. **Interest.** If any tax imposed by this chapter, or any portion thereof, is not paid within the time herein specified for the payment thereof, there shall be added thereto a specific penalty equal to four per cent of the amount so remaining unpaid if the failure to pay is not for more than 30 days with an additional two per cent for each 30 days or fraction thereof during which such failure continues, not exceeding ten per cent in the aggregate. Such penalty shall be collected as part of the tax, and the amount of the tax not timely paid, together with the penalty shall bear interest at the rate of six per cent per annum from the time such tax should have been paid until paid. Interest accruing prior to assessment upon the amount determined as a deficiency shall be assessed at the same time as the deficiency from the date prescribed for the payment of the tax (if the tax is paid in instalments, from the date prescribed for the payment of the first instalment) to the date the deficiency is assessed. Interest shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under section 290.45, subdivision 2, interest shall be paid at the rate of six per cent per annum from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

Subdivision 2. **Failure to file return; filing of false return.** If any person, with intent to evade the tax imposed by this chapter, shall fail to file any return required by this chapter, or shall with such intent file a false or fradulent return, there shall be imposed on him as a penalty an amount equal to 50 per cent of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax.

Subdivision 3. **What acts are felonies.** In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false return, with an intent to evade the tax, or a part thereof, imposed by this chapter, shall be guilty of a felony. The term "person," as used in this subdivision, includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member, or employee is under a duty to perform the act in respect to which the violation occurs.

Subdivision 4. **Payments, how credited.** All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subdivision 5. **Abatement of penalties.** The commissioner shall have power to abate penalties when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general.

[1933 c. 405 s. 49; Ex. 1937 c. 49 s. 25; 1941 c. 550 s. 19] (2394-49)

290.54 TAX A PERSONAL DEBT. The tax imposed by this chapter, and interest and penalties imposed with respect thereto, shall become a personal debt of the taxpayer from the time the liability therefor arises, irrespective of when the time for discharging such liability by payment occurs. The debt shall, in the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, be that of such person in his official or fiduciary capacity only unless he shall have voluntarily distributed the assets held in such capacity without reserving sufficient assets to pay such tax, interest, and penalties, in which event he shall be personally liable for any deficiency. This provision shall apply only to cases in which this state is legally competent to impose such personal liability.

The tax imposed by this chapter, and interest and penalties imposed with respect thereto, shall become a lien upon all of the real property of the taxpayer within this state, except his homestead, from and after the filing by the commissioner of a notice of such lien in the office of the register of deeds of the county in which such real property is situated.

[1933 c. 405 s. 48] (2394-48)

290.55 APPLICATION. Subdivision 1. **Basis for computation of taxes.** Laws 1941, Chapter 550, shall take effect from and after its passage, but shall apply in computing taxes as follows:

(1) To the taxable year 1941 and all subsequent years of taxpayers reporting on a calendar year basis;

(2) To the taxable year ending during the calendar year 1941 of taxpayers reporting on a fiscal year basis, in which case the tax shall be computed as provided in Mason's Supplement 1940, Section 2394-32 (a), and to all subsequent taxable years of such taxpayers;

(3) To every taxable year commencing on or after January 1, 1941, of every other taxpayer.

Subdivision 2. **Laws to remain in force.** All provisions of Laws 1933, Chapter 405, Extra Session Laws 1935, Chapter 87, Extra Session Laws 1937, Chapter 49, and Laws 1939, Chapter 446, as they existed prior to the passage of Laws 1941, Chapter 550, shall remain in full force and effect so far as necessary to preserve any liability for taxes, interest, and penalties incurred prior to the passage of Chapter 550.

[1939 c. 446 s. 20; 1941 c. 550 s. 24] (2394-60)

290.56 BOOKS AND RECORDS EXAMINED; TAKE TESTIMONY. For the purpose of determining the correctness of any return or of determining whether or not any person should have made a return or paid taxes hereunder, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determinations, including the taxpayer's retained copy of his return of income to the United States government for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the taxpayer or any other person or corporation. He shall further have power to require the attendance of any taxpayer or other person having knowledge or information in the premises to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

[1933 c. 405 s. 51] (2394-51)

290.57 EXAMINERS. For the purpose of making such examinations and determinations, the commissioner may appoint such officers, to be known as income tax examiners, as he may deem necessary. If the commissioner deems it advisable, he may request the public examiner, for such period of time as he may direct, to audit such returns and conduct such examinations, and report thereon to the commissioner. Upon such request being made, the public examiner shall appoint such income tax examiners as he may deem necessary.

[1933 c. 405 s. 52] (2394-52)

290.58 POWERS OF EXAMINERS. Such income tax examiners, whether appointed by the commissioner or by the public examiner, shall have all the rights and powers with reference to the examining of books, records, papers, or memoranda, and with reference to the subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony conferred upon the commissioner by this chapter. The clerk of any court of record, or any justice of the peace, upon demand of any such examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before such examiner. The commissioner may also issue subpoenas for the appearance of witnesses before him or before such examiners. The commissioner may appoint such referees as he deems necessary to review, singly or as a board of review, the reports of the income tax examiners and petitions or complaints of taxpayers, and report thereon to the commissioner. Disobedience of subpoenas issued under this chapter shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court.

[1933 c. 405 s. 53] (2394-53)

290.59 ADDITIONAL HELP. The commissioner, and the public examiner if requested to conduct examinations as hereinbefore provided, may appoint and employ such additional help, or purchase such supplies or materials or incur such other expenditures in the enforcement of this chapter as they may deem necessary. The salaries of all officers and employees provided for in this chapter shall be fixed by the commissioner, where appointed by him, and by the public examiner, where appointed by him, subject to the approval of the commissioner of administration.

[1933 c. 405 s. 54] (2394-54)

290.60 PAYMENT OF EXPENSES. All the expenses of the administration of this chapter shall be paid out of the receipts therefrom as other moneys of the state are expended by the departments incurring the same, and there is hereby appropriated out of such receipts so much thereof as may be necessary therefor.

[1933 c. 405 s. 55] (2394-55)

290.61 PUBLICITY OF RETURNS. It shall be unlawful for the commission or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter, or any information concerning, the taxpayer's affairs acquired from his or its records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such return and except as provided in section 290.361. The commissioner may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein and if the laws of the United States or of such state provide substantially for the same secrecy in respect to the information revealed thereby as is provided by our laws. The commissioner and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this chapter. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof.

Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

[1933 c. 405 s. 56; Ex. 1937 c. 49 s. 31; 1941 c. 18 s. 5] (2394-56)

290.62 DISTRIBUTION; REFUNDS. The revenues derived from the taxes, interest, and penalties under this chapter shall be paid into the state treasury and credited to a special fund to be known as income tax school fund, and distributed as follows:

(1) There shall be paid from this income tax school fund all refunds of taxes erroneously collected from taxpayers under this chapter as provided herein;

(2) There shall be transferred each year from this fund to the general revenue fund the amount expended from the latter fund for expenses of administering this chapter;

(3) Out of the balance in this income tax school fund, after meeting the requirements of clauses (1) and (2), there shall be distributed to each school district of the state, including municipalities operating their own school, an amount equal to $10.00 per child between the ages of six and 16 years, both years inclusive, residing in such district; provided, that a child in his sixteenth year shall be included only if in actual attendance in school. The school census taken during the fiscal year shall be used as the basis for computing the amount due each school district. Except as otherwise provided by any law heretofore or hereafter passed with respect to particular school districts, the money so distributed shall be used for the following purposes only:

(a) Payment or providing for the payment of any bonded or other indebtedness of such district outstanding January 1, 1933;

(b) Providing for the payment of any bonded or other indebtedness thereafter incurred until such debts are fully paid or payment thereof provided for;

(c) Any such revenue not required to pay or provide for the payment of any such indebtedness shall be used to pay current operating expenses and to reduce and replace levies on real and personal property;

(d) Where the county auditor is required by any law to levy a tax to pay any interest or principal of any bonded indebtedness of a school district, such district may, on or before October first of any year, pay any of such money available therefor to the county treasurer to pay any interest or principal maturing or becoming due during the next ensuing year, in which case the auditor shall reduce the amount of the levy so required to be made by him by the amount so paid to the treasurer;

(4) If any money remains in the income tax school fund after making the distributions specified in clauses (1), (2), and (3), such balance, not in excess of the amount appropriated for such purpose, shall be used to pay special school aid provided by law, and the amount so used shall be deducted from the appropriation therefor;

(5) The money available for distribution under clauses (3) and (4) shall be distributed by the state board of education semiannually, in the same manner, as nearly as practicable, as now provided by law governing the distribution of state funds by the board, except that each school district shall be entitled to receive the money distributable under clause (3) without being subject to any conditions;

(6) All money collected up to and including December 31, 1937, irrespective of the year for which such taxes were assessed and from which have been deducted the sums required for the payment of all costs of administration incurred and paid prior to December 31, 1937, and for the payment of all refunds granted prior to December 31, 1937, and not heretofore distributed, shall be distributed on the basis of school population within such district of compulsory school age and based on the 1936 school census; this distribution shall be additional to the amounts provided in clause (3) hereof and used only for the purposes therein stated;

(7) All money collected on and after January 1, 1938, irrespective of the year for which such taxes were assessed shall be distributed as provided in clause (3) hereof. In common school districts which have no debt and where no school is conducted but where educational facilities are provided by contract with another public school, the income tax accruing to the common school district may, by a majority vote of the governing board of such common school district, be assigned to the public school providing the educational facilities for the pupils of such common school district for the purpose of aiding in the liquidation of bonded indebtedness incurred in construction of school buildings in the district affording such educational facilities under contract with such common school district. The assignment of such income tax shall not be construed as compensation for providing

educational facilities for the students of such common school district but in addition thereto, and only for the purpose herein designated.

[1933 c. 405 s. 57; 1935 c. 252; 1937 c. 122; 1937 c. 397; Ex. 1937 c. 49 s. 28; 1939 c. 438 s. 1; 1941 c. 445] (2394-57)

290.63 APPLICATION. This chapter shall apply in computing taxes as follows:

Except as herein provided, the provisions of this chapter shall apply only to taxable years beginning after December 31, 1938.

This chapter shall apply to the excise tax imposed upon banks by sections 290.361 and 290.362 for the taxable year beginning with January 1, 1939, and subsequent years.

[1939 c. 446 s. 24] (2394-61)