CHAPTER 271

BOARD OF TAX APPEALS

NOTE: The decisions of the Board of Tax Appeals are not codified or printed in any volume but copies of the decisions are available on application to the board. A digest of the decisions of the board will be found at the end of this chapter immediately following section 271.20.

271.01 CREATION.

HISTORY. 1939 c. 431 art. 6 s. 10; M. Supp. s. 2362-10; 1943 c. 533 s. 1.

The reorganization act of 1939 is in harmony with the modern trend of creating an intermediate board to serve as a so-called administrative "clearing house" between a department of government and the courts. The creation of the federal board of tax appeals is an example. Village of Aurora v Commissioner, 217 M 74, 14 NW(2d) 292.

271.02 OFFICERS.

HISTORY. 1939 c. 431 art. 6 s. 11; M. Supp. s. 2362-11.

271.03 SEAL.

HISTORY. 1939 c. 431 art. 6 s. 12; M. Supp. s. 2362-12.

271.04 HEARINGS.

HISTORY. 1939 c. 431 art. 6 s. 13; M. Supp. s. 2362-13.

271.05 POWER TO REVIEW.

HISTORY. 1939 c. 431 art. 6 s. 14; M. Supp. s. 2362-14.

271.06 APPEALS FROM ORDERS.

HISTORY. 1939 c. 431 art. 6 s. 15; M. Supp. s. 2362-15; 1943 c. 174 s. 3; 1945 c. 604 ss. 23, 24.

The notices of appeal are sufficient under the rule that a notice of appeal should be liberally construed; that it is sufficient if it substantially states the facts required by the statute. In the instant case an appeal to the board of tax appeals is the exclusive remedy. Village of Aurora v Commissioner, 217 M 64, 67, 14 NW(2d) 292.

The commissioner of taxation is not required to make specific findings of fact and conclusions of law in every order assessing additional taxes. Re Burroughs Co. Minnesota Board of Tax Appeals, June 6, 1944 (93).

On consideration of a gift tax, the burden of proving error is upon the taxpayer. Re Putman, Minnesota Board of Tax Appeals, Feb. 9, 1944 (148).

271.07 STENOGRAPHIC REPORT; TRANSCRIPT.

HISTORY. 1939 c. 431 art. 6 s. 16; M. Supp. s. 2362-16.

271.08 WRITTEN FINDINGS OF FACT AND DECISION; TRANSMITTED; NOTICE.

1939 c. 431 art. 6 s. 17; M. Supp. s. 2362-17; 1945 c. 604 s. 25.

271.09 APPEALS AND REVIEWS.

HISTORY. 1939 c. 431 art. 6 s. 18; M. Supp. s. 2362-18.

In equalization proceedings appeal to the board of tax appeals is the exclusive remedy to review the order of the commissioner, and such appeal will be heard notwithstanding an appeal is pending in district court. City of Virginia, Minnesota Board of Tax Appeals, Jan. 13, 1944 (147).

271.10 REVIEW BY SUPREME COURT.

HISTORY. 1939 c. 431 art. 6 s. 19; M. Supp. s. 2362-19; 1943 c. 174 s. 4.

Under section 271.10, a review of a final order of the board of tax appeals may be had on certiorari by the supreme court, and such review is limited to a consideration of the questions whether the board was without jurisdiction, that the order of the board was without jurisdiction, that the order of the board was not justified by the evidence or was not in conformity with law, or that the board committed any other error of law. The court will go no further than to determine whether the evidence was such that it might reasonably make the order. Village of Aurora v Commissioner, 217 M 81, 14 NW(2d) 292.

The supreme court review of the board of tax appeals is limited by the provisions of section 271.10. Similar limitations, are imposed upon the circuit court of appeals when reviewing decisions of the United States board of tax appeals (the tax court) which restrict the scope of review to a reversal or modification only if the decision is not in accordance with the law. The sole proposition in the instant case is whether there is any basis under the statute for the board's decision. Duluth-Superior Co. v Commissioner, 217 M 348, 14 NW(2d) 439.

271.11 ORDERS TO BE PRIMA FACIE EVIDENCE OF FACTS.

HISTORY. 1939 c. 431 art. 6 s. 20; M. Supp. s. 2362-20.

271.12 NOT TO BE EFFECTIVE UNTIL TIME FOR APPEAL HAS EXPIRED.

HISTORY. 1939 c. 431 art. 6 s. 21; M. Supp. s. 2362-21; 1945 c. 604 s. 26.

271.13 MAY COMPEL ATTENDANCE OF WITNESSES.

HISTORY. 1939 c. 431 art. 6 s. 22; M. Supp. s. 2362-22.

271.14 DEPOSITIONS.

HISTORY. 1939 c. 431 art. 6 s. 23; M. Supp. s. 2362-23.

271.15 WHO MAY ADMINISTER OATHS.

HISTORY. 1939 c. 431 art. 6 s. 24; M. Supp. s. 2362-24.

271.16 RULES AND REGULATIONS.

HISTORY. 1939 c. 431 art. 6 s. 25; M. Supp. s. 2362-25.

271.17 SECRETARY OF DEPARTMENT AND CLERK OF BOARD SHALL BE FILING OFFICERS.

HISTORY. 1939 c. 431 art. 6 s. 26; M. Supp. s. 2362-26.

271.18 EX-OFFICERS AND EX-EMPLOYEES NOT TO REPRESENT CLIENTS; EXCEPTION; VIOLATION.

HISTORY. 1939 c. 431 art. 6 s. 27; M. Supp. s. 2362-27.

271.19 COSTS AND DISBURSEMENTS.

HISTORY. 1939 c. 431 art. 6 s. 28; M. Supp. s. 2362-28.

271.20 DECISIONS FILED WITHIN THREE MONTHS.

HISTORY. 1939 c. 431 art. 6 s. 30; M. Supp. s. 2362-30.

DIGEST OF THE OPINIONS OF THE BOARD OF TAX APPEALS

Generally

The reorganization act of 1939 is in harmony with the modern trend of creating an intermediate board to serve as a so-called administrative "clearing house" between a department of government and the courts. The creation of the federal board of tax appeals is an example. Under Section 271.10, a review of a final order of the board of tax appeals may be had on certiorari by the supreme court, and such review is limited to a consideration of the question whether the board was without jurisdiction, that the order of the board was without jurisdiction, that the order of the board was not justified by the evidence or was not in conformity with law, or that the board committed any other error of law. Village of Aurora v Commissioner, 217 M 81, 14 NW(2d) 291.

The supreme court review of the board of tax appeals is limited by the provisions of Section 271.10. Similar limitations are imposed upon the circuit court of appeals when reviewing decisions of the United States board of tax appeals (the tax court) which restrict the scope of review to a reversal or modification only if the decision is not in accordance with the law. The sole proposition in the instant case is whether there is any basis under the statute for the board's decision. Duluth-Superior Co. v Commissioner, 217 M 348, 14 NW(2d) 439.

In determining questions of law, courts may properly attach weight to the decisions of certain questions by an administrative body having special competence to deal with the subject matter; and though decisions of the tax court may not be binding precedents for courts dealing with similar problems, uniform administration is promoted by conforming to them where possible. Dobson v Commissioner, 320 US 491.

ANNOTATIONS OF THE DECISIONS OF THE BOARD OF TAX APPEALS FOLLOWING THE ARRANGEMENT OF THE MINNESOTA TAX STATUTES PROGRESSIVELY AND CONSECUTIVELY

DEPARTMENT OF TAXATION

270.20 HEARINGS; JURISDICTION OF COMMISSIONER.

The assessor of the city of Virginia placed the Rouchleau Reserve mineral property on the real property assessment rolls for the year 1942; and the iron ore stock pile of the Alpena group was assessed as personal property. Upon the protest of the taxpayers the St. Louis county board of equalization had the valuations of the two properties before it and certified the assessed values to the commissioner of taxation without change. The city of Virginia under authority of Section 270.20 on February 2, 1943, appealed to the board of tax appeals from the order of the commissioner dated December 22, 1942.

On February 11, 1943, taxpayers commenced an action in the district court of St. Louis county to review the assessment made as of May 1, 1942, and thereafter brought the instant motions for dismissal of the appellant's appeal, or in the event said motions be denied for a stay of proceedings pending the determination of the action in the district court.

This is a question of jurisdiction. Section 270.19 specifically grants to municipalities the right to appear and to become parties to any proceeding before the commissioner held for the purpose of equalizing or assessing any real or personal property in said municipality. Section 270.11 defines the powers and outlines the proceedings in equalization of assessments before the commissioner.

It is clear that the order appealed from by the appellant is one which is appealable to the board of tax appeals under the provisions of Section 271.06, Subdivision 1. The motion of the taxpayers for an order dismissing the appeal is denied. The motion for a stay of proceedings is also denied following the precedent set in the case of Village of Aurora v Commissioner, 217 M 64, 14 NW(2d) 292. City of Virginia v Commissioner of Taxation, MBTA, Jan. 13, 1944 (147), (no appeal).

BOARD OF TAX APPEALS

271.06, Subd. 2. APPEALS FROM ORDERS.

In view of the tremendous increase in the administrative functions of the tax department, except where the legislature so directs, the commissioner is not required to make findings of fact and rulings in every case. The board under rule 12 has reserved the right to suspend rigid forms of pleading, practice, and evidence, and on proper motion to grant relief to parties under the general policy of rule 12. Commander Larabee Corp. v Commissioner of Taxation, MBTA, Feb. 24, 1940 (9), (no appeal).

271.06, Subd. 3. APPEALS FROM ORDERS; PLEADINGS.

Where the taxpayer obtained on two occasions an extension of time, it waived any objection it might have had because the commissioner had not filed his return within the statutory time. Sound policy requires that the interest of the state be not jeopardized by the failure of its officers to act in its defense there being no showing of burden, hardship, or loss on the taxpayer. Commander Larabee Corp. v Commissioner of Taxation, MBTA, Feb. 24, 1940 (9), (no appeal).

271.06, Subd. 2. APPEALS FROM ORDERS; TIME; NOTICE; INTERVENTION.

A notice of appeal should be liberally construed; it is sufficient if it substantially states the facts required by the statute; and under Section 271.06, Subdivision 1, the municipalities in the instant case were properly joined as parties in each appeal to the board of tax appeals from the official order of the commissioner. Village of Aurora et al v Commissioner of Taxation, MBTA, March 13, 1943 (Oliver Co. 55; St. James Co. 56), (affirmed, 217 M 64, 14 NW(2d) 292).

271.06 APPEALS FROM ORDERS; HEARINGS; DETERMINATION OF ISSUES.

The commissioner of taxation equalized and assessed the valuation of "unmined iron ore" on mineral lands belonging to the taxpayers. The Village of Aurora and others appealed to the board in the ground that the assessed valuation is inadequate. The taxpayers moved for a dismissal of the appeal or for a stay of proceedings because of an action pending in St. Louis county district court.

The issue of under-valuation before the board of tax appeals and that of overvaluation in the district court action commenced under Section 278.01 were not the same as contemplated by Section 279.01 so as to permit a stay of proceedings before the board, and the taxpayers' motion for a stay of proceedings is denied. Village of Aurora et al v Commissioner of Taxation, MBTA, March 13, 1943 (Oliver Co. 55; St. James Co. 56), (affirmed, 217 M 64, 14 NW(2d) 292).

271.09, Subd. c. APPEALS AND REVIEWS; LIMITATIONS; EXCEPTIONS.

The commissioner under date of December 19, 1940, filed an order equalizing the assessments on certain mineral properties within the taxing district of the appellant for the year 1940. The Village of Aurora and another appealed. The municipality is limited in the right of appeal to the board. The taxpayer has other rights and in the instant case instituted a proceeding in the district court pursuant to Laws 1935, Chapter 300 (Sections 278.01 to 278.13). The municipalities appealed to this board on February 7, 1941. The taxpayers commenced their proceedings in the district court on February 14, 1941. The instant proceedings arise upon a motion of the taxpayers to stay further proceedings upon the appeal to the board of tax appeals until final determination of the proceedings pending in the district court.

The board holds that the issues raised in the appeal to the board are the same as the issues raised by the taxpayer in the district court action, and the motion herein is denied.

To grant the motion would in effect deprive the municipalities of a right to offer evidence or to have a review of the issue which they raise, namely, that due to errors of the commissioner the valuations are inadequate. After the commissioner has made a determination Section 271.05 provides for an appeal to the board of tax appeals; Section 271.10 provides for a review of the final order of the board of tax appeals to the supreme court. These three steps: (1) the determination by the commissioner; (2) review by the board; and (3) review by the supreme court when all rights are exercised, constitutes the final administrative determination. Village of Aurora et al v Commissioner of Taxation, MBTA, May 20, 1941 (55), (no appeal).

271.09, Subd. c. APPEALS AND REVIEWS; LIMITATIONS; EXCEPTIONS.

This case involves identically the same issues involved in Docket No. 55 except that different mining properties are involved and different taxpayers applied for a stay of proceedings. The motion was denied. Village of Aurora et al v Commissioner of Taxation, MBTA, May 20, 1941 (56), (no appeal).

GENERAL PROVISIONS RELATING TO TAXATION

272.02 PROPERTY EXEMPT FROM TAXATION.

The contract under which the Benedictine Sisters Benevolent Association, the taxpayer, arranged to take over the hospital property was dated January 11, 1941. They immediately took possession and the repair work and the furnishing of the hospital was completed in January, 1942, at which time the deed to the property was delivered and the taxpayer began operation of the hospital.

Upon application of the taxpayer the commissioner under date of May 29, 1942, made and entered an order abating the taxes for 1941, and the Village of Hibbing appealed.

The board finds that the hospital is a public one and entitled to exemption from taxation notwithstanding the fact that the taxpayer charged $50.00 a month for the services of each sister who served, said compensation being paid into a fund for the support, care, and training of sisters in order to maintain the system under which their services were made available.

Where an institution entitled to hold its property exempt from taxation acquires property with the intention of devoting it to tax exempt use, the right of exemption carries with it as an incident the opportunity to fit the property for the proposed use.

The owner of property under a deed containing a condition subsequent is the owner for tax exemption purposes.

The order of the commissioner abating the taxes for 1941 is ratified and affirmed. Village of Hibbing v Commissioner of Taxation, MBTA, Sept. 15, 1943 (117), (affirmed, 217 M 528, 14 NW(2d) 923).

272.02 (4). PROPERTY EXEMPT FROM TAXATION.

The property of St. Paul Council of Campfire Girls, used exclusively as a camp for girl members during the summer months, is not exempt from ad valorem taxation on the grounds that it is a seminary of learning within the provisions of Minnesota Constitution, Article 9, and Section 272.02 (4). The camp property does not qualify as a seminary of learning. The commissioner properly denied the claim for exemption. St. Paul Council of Campfire Girls v Commissioner, MBTA, March 6, 1945 (213), (no appeal).

272.31 LIEN OF REAL ESTATE TAXES.

Controlled by Section 272.31, the lien for real estate taxes, effective in favor of the state as of May 1, does not take effect as between grantor and grantee until the first Monday in January of the succeeding year. So, where taxes for 1936 are paid during 1937 by an owner who acquired title in 1936, the payment is deductible in the computation of the income tax for 1937. It cannot be considered a capital expenditure. Hallam v Commissioner of Taxation, MBTA, Nov. 28, 1940 (33), (affirmed, 211 M 156, 300 NW 600).

TAXES; LISTING AND ASSESSMENT

273.13, Subd. 2. CLASSIFICATION OF PROPERTY; HOW CLASSIFIED; CLASS 1.

The commissioner of taxation equalized and assessed the valuation of "unmined iron ore" on mineral lands belonging to the taxpayers. The municipalities, wherein the mining property is located, contend that the assessed valuation is inadequate and results from an erroneous use of factors in the valuation formula used by the commissioner, and the taxpayers, as intervenors, contend the commissioner overvalued the property.

The value of mining property for tax purposes is the price for which it will sell at a fair, voluntary sale for cash. In the absence of such representative sales, values may be determined by the judgment and opinion of men "acquainted with the lands, their adaptability for use, and the circumstances of the surrounding community." In each of the two cases the board of tax appeals made some modifications in the order of the commissioner but practically and in principle upheld the commissioner.

The supreme court in reviewing the decision of the board held that whether certain cost factors and interest rates used in calculating net future profits and the reduction of the latter to present worth by the application of the "Hoskold" tables were proper, presented fact questions for the board of tax appeals, the determination of which will not be disturbed if there is evidence reasonably tending to sustain the board's findings. The court found that the evidence reasonably tended to sustain the findings of the board increasing the valuation of the mining properties. Village of Aurora et al v Commissioner of Taxation, MBTA, March 13, 143 (Oliver Co. 55; St. James Co. 56), (affirmed, 217 M 64, 14 NW(2d) 292).

INCOME TAXES AND PRIVILEGE TAXES ON CORPORATIONS MEASURED BY INCOME

290.01, Subd. 4. CORPORATION DEFINED.

The Board of Underwriters at Lloyds of Minneapolis is an association within the meaning of Section 290.01, Subdivision 4, and as such correctly took as a credit the 1937 tax on premiums pursuant to Section 290.06, Subdivision 3 (5); and individual subscribers, including the taxpayer, had no corresponding right to offset the amount of distribution received by them from underwriters at Lloyds of Minneapolis by a proportionate amount of this gross premium tax; and the distribution received by the taxpayer in the amount of $300 was correctly returned to the taxable net income of the taxpayer by the commissioner. Hauschild v Commissioner of Taxation, MBTA, May 13, 1941 (49), (no appeal).

290.01, Subd. 20. GROSS INCOME.

Taxpayer, a domiciled resident of Minnesota, received $2,913.89 in 1937 as renewal commissions paid in as a result of insurance policies written by him in Michigan in 1934 and prior years while a resident of that state. The commissioner of taxation properly assessed the taxpayer an additional tax on said earnings. The taxpayer is not a nonresident. No question of allocation is involved. Section 290.17 (1) has no application. McMahon v Commissioner of Taxation, MBTA, Sept. 10, 1940 (38), (no appeal).

290.01, Subd. 21 (1). DEFINITIONS; DIVIDENDS.

Taxpayer prior to the maturity date of certain bond coupons detached and delivered them to a charitable corporation. The taxpayer retained ownership of the bonds. He did not include this item of $5,196 coupon interest in his income tax return for the year 1940. The commissioner restored the amount to taxpayer's 1940 gross income and assigned an additional tax thereon.

The board distinguished this case from that of Horst v Commissioner, 311 US 112, and follows Commissioner v Williston, 54 NE(2d) 43, and reversed the holding of the commissioner.

When a statute is adopted from another state or country and such statute has previously been construed by the courts of said state or country, the statute is deemed, as a general rule, to have been adopted with the construction so given to it. Decisions rendered after the adoption have only persuasive force. In the instant case the taxpayer got nothing that can be said to have any pecuniary or financial value. It is parodoxical to contend that this taxpayer in giving away his property acquired an increase in his economic wealth. Drew v Commissioner of Taxation, MBTA, Sept. 27, 1945 (214), (appeal pending).

290.01, Subd. 21 (2). WHAT ARE DIVIDENDS.

The taxpayer was the majority stockholder, active manager, and only paid officer of Thompson Bros. Inc., a Minnesota corporation. He received as compensation for services rendered in 1937 a salary paid as such and so regarded both by taxpayer and the corporation and without restriction as to disposition or use. The taxpayer included said salary in his income tax returns for 1937 and paid the tax thereon.

In 1940 the taxpayer filed his claim for refund, claiming that he had overpaid his income taxes. His claim for refund was based on a resolution passed by the corporation in 1925 to the effect that salaries of the officers were not to exceed the net earnings of the corporation in any one year; and the amounts he received as salary were in excess of the net earnings of the corporation in 1937 so that the taxpayer claims that the amount he received was part salary and the overage amounted to a loan or distribution of corporate assets and that he should not have been taxed upon said overage.

The board finds that the commissioner properly denied the taxpayer's claim for a refund, the entire amount received by the taxpayer in 1937 being deemed salary.

This board adopts the rule laid down by the federal courts that the legal right of the taxpayer to the full amount paid as salary is not the determining factor. The important thing is receipt under claim of right and without restriction as to its disposition, following American Oil Consolidated v Burnett, 286 US 417.

The overage in the present case was not a loan because the taxpayer at no time considered the amount received in excess of net earnings as anything but salary. There were no bookkeeping entries to show that the entire amount paid to the taxpayer was anything except salary. Thompson v Commissioner of Taxation, MBTA, March 26, 1942 (68), (no appeal).

290.01, Subd. 21 (2). WHAT ARE DIVIDENDS.

This appeal is identical with Docket No. 68 except that a refund is asked for on taxpayer's payment of the 1938 tax and the holding is the same as in Docket No. 68 where a refund was asked on the 1937 tax payment. Thompson v Commissioner of Taxation, MBTA, March 26, 1942 (69), (no appeal).

290.01, Subd. 21 (4). WHAT ARE DIVIDENDS; LIQUIDATION.

The taxpayers were owners of stock in Folds, Buck & Company in liquidation beginning in 1932. The last liquidating dividend was paid in 1935. At that time a lawsuit in behalf of the corporation was pending. There was a decision adverse to the corporation in 1935 and, an appeal being taken, the appellate court sustained the trial court in 1937.

The taxpayers claimed a loss in its 1936 return. The commissioner denied the deduction contending that, under Section 290.01, Subdivision 21 (4), the loss was deductible in 1935, the year in which the corporation made its final distribution.

The taxpayers further filed a claim for refund on their 1937 income tax claiming that the loss was deductible in 1937, the year in which the appellate court made its adverse decision. The commissioner denied the refund, and the taxpayers appealed from both of the commissioner's orders.

The board of tax appeals held that the loss was determined in 1937 when the appellate court handed down its decision. Sections 290.09 (4) and 290.01, Subdivision 21 (4), must be interpreted in a practical manner in order to arrive at a practical determination in which year the property became worthless and the loss was actually realized. At the time the taxpayers received their last dividend in 1935, the corporation had an interest in a pending suit for the recovery of a large amount of money. If that suit had been successful, the taxpayers would have received an additional $10,000. As a practical matter, there might have been a settlement of the pending suit which would have netted an additional dividend. The property of the taxpayers did not become valueless until 1937.

The commissioner is sustained in denying the deduction in the 1936 return, but the commissioner's order denying a refund on the 1937 taxes is reversed. Green v Commissioner of Taxation, MBTA, Nov. 28, 1940 (26 as to 1936 tax; 40 as to 1937 tax), (no appeal).

290.06, Subd. 3 (4). RATES OF TAX; CREDITS.

The commissioner determined that the taxpayer, under the provisions of Section 290.06, Subdivision 3 (4), was entitled to a credit against his tax in the amount of $481.39; while the taxpayer claims the credit should have been $7,608.81, and that the application by the commissioner of the rule laid down in Section 290.06, Subdivision 3 (4) is arbitrary and discriminatory and violates the uniformity clause of Article 9 of the state constitution and the 14th amendment of the federal constitution. The sole issue is the constitutionality of Section 290.06, Subdivision 3 (4).

The board in all respects affirmed the order of the commissioner and on appeal to the supreme court it in turn affirmed the decision of the board.

The state legislature in the exercise of its discretionary powers did not violate the uniformity clause. A plan for apportioning credit according to the ratio of property and payroll located within the state to property and payroll outside the state does not unconstitutionally discriminate against corporations having property and payroll outside the state, since the classification made rests on a distinction which bears a reasonable relation to the object of taxation. Montgomery Ward & Co. v Commissioner of Taxation, MBTA, March 24, 1943 (122), (affirmed, 216 M 307, 12 NW(2d) 625).

290.071 TREATMENT OF INCOME WHERE EARNINGS COVER A PERIOD OF 36 MONTHS OR MORE.

Taxpayer, on January 1, 1930, was engaged as attorney for the receiver of the Cuyuna and Minneapolis Iron Company. When the case was closed in 1941, he was paid $18,500 for his 12 years service. In making his 1941 income tax return he allocated one-twelfth of the fee to each of 12 years ending with 1941. The commissioner under the then existing law assigned all of the $18,500 to the gross income of the taxpayer for 1941. Thereafter, and pursuant to Laws 1943, Chapter 656, Section 3, Subdivision 2, which was made applicable to taxable years beginning after December 30, 1940, and pertaining to the receipt of compensation for personal services covering a period of 36 months or more, the commissioner again audited this taxpayer's 1941 return and modified the assessment of the tax in the light of the 1943 amendment.

The order of the commissioner, after this final audit, is sustained by the board except for a small modification. The commissioner's original order under the old law, and his amended order under the 1943 amendment, follow federal practice and are fair and charitable to the taxpayer, and carry out the evident intention of the legislature and are approved. Trask v Commissioner of Taxation, MBTA, July 11, 1944 (191), (no appeal).

290.08 (3) EXEMPTIONS FROM GROSS INCOME.

The commissioner in assessing income tax liability, correctly determined that the aggregate premiums paid for the annuities was $50,000, and that the $2,034.96 received by Ila M. Stewart as annuity payments in 1939 there should be excluded from gross income only the sum of $534.96 which represents the excess of the amount received over an amount equal to three per cent of $50,000, and in considering the income tax for the year 1940 a similar rule should apply. Stewart v Commissioner of Taxation, MBTA, Dec. 18, 1944 (158) (159), (no appeal).

290.08 (13) EXEMPTIONS FROM GROSS INCOME; LESSOR ON TERMINATION OF LEASE.

On May 1, 1920, taxpayer, as lessor, leased real estate, land and buildings for a period of 99 years. The lease provided that any improvements made by the lessee became the property of the lessor upon the termination of the lease. The lessee made substantial improvements to the buildings. The lease was canceled for non-payment of rent on January 7, 1939, and the taxpayer regained possession of the property. With a vacant lot lease for 99 years and repossessed after ten years, the increase in value in the meantime would not be taxable. The increase in the value of land considered alone accrues at the time of sale of the land. The measure of the amount of income realized by a lessor upon the termination of a lease by reason of improvements is the fair market value of such improvements at the time of repossession. The fact that the taxpayer received no money by reason of the cancelation of the lease does not protect him from the tax. Gain or profit is a proper concept and embraces more than the word "money". In the face of later federal legislation and Laws 1943, Chapter 656, Section 21, Subdivision 1, the board holds that income of the kind here involved and prior to the passage of the 1943 act, was taxable in Minnesota in the year of repossession. Pfeifer Realty Co. v Commissioner of Taxation, MBTA, Feb. 6, 1945 (163), (no appeal).

290.09 (1) DEDUCTIONS FROM GROSS INCOME; CONTRIBUTIONS BENEFICIAL TO EMPLOYEES.

Where in a particular case an expenditure is made by a taxpayer, which has a reasonable and direct relationship to the carrying on of the business of the taxpayer, and where such expenditure has a reasonable and direct relationship to welfare work for the benefit of taxpayers employees, the same constitutes an ordinary and necessary expense of the taxpayers business and is properly deductible. McCloud River Lumber Co. v Commissioner of Taxation, MBTA, Dec. 15, 1939 (1), (no appeal).

290.09 (1) DEDUCTIONS FROM GROSS INCOME; CONTRIBUTIONS BENEFICIAL TO EMPLOYEES.

Taxpayer, a Minnesota corporation taxable in Minnesota and owning and operating a lumber camp and mill in California, properly deducted from gross income, when computing its net income, certain gifts in reasonable amounts to churches built on taxpayers land, and attended by taxpayers camp and mill employees. McCloud River Lumber Co. v Commissioner of Taxation, MBTA, Dec. 15, 1939 (1), (no appeal).

290.09 (1) DEDUCTIONS FROM GROSS INCOME; EXPENSES IN CONDUCTING ACTIVITY FROM WHICH INCOME IS DERIVED.

Taxpayer, a passive beneficiary, derived her income from a trust. She in good faith determined there was mismanagement of the trust and that under proper management she should derive a greater income therefrom, and in good faith employed attorneys who instituted an action which resulted in an ultimate settlement between the parties. The taxpayer was the sole beneficiary of the income from this trust. The taxpayer had an unlimited right of withdrawal of the principal and this gave her the right to terminate the trust. The taxpayer in instituting this action was engaged in an activity from which it was anticipated greater income would be received. The payment to her attorneys of $25,102.06 was properly deducted from her gross income. Queal v Commissioner of Taxation, MBTA, Sept. 9, 1940 (18), (no appeal).

290.09 (1) DEDUCTIONS FROM GROSS INCOME; EXPENSES IN CONDUCTING BUSINESS.

The taxpayer, owner of certain mining properties and holder of certain leaseholds, together with the Crucible Steel Co., formed a corporation called the Snyder Mining Co. In the operation of this mine each company advanced an equal part of the operating expense. Taxpayer and Crucible each purchased certain amounts of ore yearly, the price of said ore being the cost of production to Snyder without profit. Taxpayer assigned to the Snyder Mining Co. its leaseholds but reserved to itself certain additional royalties. Taxpayer is a Pennsylvania corporation, operating in Pennsylvania, and its only property in this state is its two mines from which it receives a royalty from Snyder and its interest in the Snyder non-profit corporation. The total amount of its royalties for the year 1936 was $185,405.04 on which the commissioner laid a tax. The taxpayer contends that its payments to the Snyder Company covering its share of the expense, amounted to $92,702.52, which the taxpayer claims should be deducted as the ordinary and necessary expense incurred in conducting its business activities in the state, and that the income on which it should be taxed should be the difference between the total income of $185,405.04 less the $92,702.52, leaving a net amount on which income should be taxed of $92,702.52.

The board held with the taxpayer and reduced the amount of the tax accordingly. Shenango Furnace Co. v Commissioner of Taxation, MBTA, July 8, 1941 (34), (no appeal).

290.09 (1) DEDUCTIONS FROM GROSS INCOME; BUSINESS EXPENSE.

From 1909 to 1919 one Wade was president and general manager of the appellant corporation, hereinafter called the taxpayer. When Wade died in 1919, he was personally indebted to the taxpayer. In 1937 the taxpayer, in consideration of Wade's past services, cancelled its claim against Wade's estate; and in filing its franchise tax return for the fiscal year of October 1, 1936 to September 30, 1937, deducted the amount of its canceled claim against the Wade estate from its gross income on the theory that the same constituted an ordinary and necessary expense. The commissioner properly disallowed the deduction.

While the statute does not require that the services should actually be rendered during the taxable year, the payment thereof must be a proper expense paid or incurred during the taxable year. During the years when Wade's overdraft was created, the taxpayer enjoyed an unusual high net income which indicates that failure to pay additional compensation to Wade was not due to any financial inability of the taxpayer. The facts do not warrant a claim of any moral obligation on the part of the employer. Fairmont Ry. Motors v Commissioner of Taxation, MBTA, March 26, 1942 (87), (no appeal).

290.09 (1) EXEMPTIONS FROM GROSS INCOME; BUSINESS EXPENSE.

The taxpayer expended funds during the calendar year 1938 for the purpose of securing his reelection as district judge for a six year term, commencing in January, 1939. The amount so expended was deducted in his 1938 income tax return, the taxpayer contending that the expenditure constitutes ordinary and necessary business expense such as contemplated by Section 290.09 (1).

The board held with the commissioner that this expenditure was a personal expense and cannot be allowed as a business expense deduction. The commissioner properly returned the amount of the deduction to the taxable net income of the taxpayer and properly assessed an additional tax for the calendar year 1938. Hanft v Commissioner of Taxation, MBTA, Oct. 16, 1942 (107), (no appeal).

290.09 (3) DEDUCTIONS FROM GROSS INCOME; TAXES PAID.

The $60.00 deducted from the taxpayer's salary under and by virtue of the Federal Laws, U. S. C. A. Title 26, Section 1400, is properly deductible from the taxpayer's gross income under Section 290.09 (3). Hauschild v Commissioner of Taxation, MBTA, May 13, 1941 (49), (no appeal).

290.09 (3) DEDUCTIONS FROM GROSS INCOME; TAXES ACCRUED.

The Central Warehouse Lumber Company, a South Dakota corporation, maintaining its principal place of business in Minneapolis, ceased to do business and was legally dissolved on October 30, 1941. As part of the dissolution proceedings the corporation deposited $3,000 with a Minneapolis bank to cover its estimated 1941 federal and Minnesota tax liability. In February, 1942, the appellant, after determining the income tax liability of the corporation, notified the Minneapolis bank to draw checks in payment thereof. The checks were given to appellant who then forwarded them with the income tax returns to the federal and state governments where they were received on March 2, 1942.

In the Minnesota income tax return there was taken as a deduction the amount of the federal tax on account of 1941 income tax liability as well as the amount of the 1940 federal income tax. The commissioner disallowed the deduction of the 1941 federal income tax contending that it was only deductible in the taxable year in which paid and was not taxable until payment was made in 1942 and he assessed the Central Warehouse Lumber Company an additional 1941 tax. The appellant, a chief stockholder, appeals to the board.

The order of the commissioner assessing the taxpayer with an additional tax plus statutory interest is in all respects affirmed.

Federal income taxes for the year 1941 do not become payable until 1942, and in the present instance were not paid until 1942 and do not constitute a deduction from the gross income for the year 1941. Bratnober v Commissioner of Taxation, MBTA, Sept. 8, 1944 (190), (no appeal).

290.09 (4) DEDUCTIONS FROM GROSS INCOME; CORPORATE STOCK LOSS.

Taxpayer in his 1937 income tax return claimed a loss on certain stock. The commissioner properly denied said deduction, the loss having been sustained during the taxable year of 1936.

The test of deductibility is not the year in which the taxpayer learns of, or has knowledge of, the worthlessness of his stock. The statute makes a distinction between the deduction of "loss" and of "bad debts". "Losses" must be deducted in the year in which they are "sustained", and if the taxpayer fails to learn of them in time he loses the privilege. Debts must be deducted in the year in which the taxpayer "ascertains" them to be "worthless". The worthlessness of stock must be established by some identifiable event. The loss is sustained in the year in which it is evidenced by a closed and completed transaction fixed by "identifiable events". The identifiable events in the instant case are that the corporation filed its petition in bankruptcy on October 21, 1936, and the bankruptcy proceedings were closed in 1940. The board intentionally made a negative finding in this case to the effect that the loss was not sustained in 1937. Schultz v Commissioner of Taxation, MBTA, May 28, 1942 (61), (no appeal).

290.09 (4) DEDUCTIONS FROM GROSS INCOME; CORPORATE STOCK LOSS.

Taxpayer in 1937 was the owner of $450 worth of stock in a corporation. Upon reorganization of the corporation he accepted a $450 bond in Central Investors Union for his stock. In 1939 he deemed the bond worthless and took credit for $450 as a deduction item in his 1939 return. The commissioner disallowed the credit claiming that the loss occurred in 1938.

The receiver's report in July, 1939, indicating the worthlessness of the bond, is information to place the loss in 1939. The finding is in favor of the taxpayer. Knight v Commissioner of Taxation, MBTA, June 13, 1944 (181), (no appeal).

290.09 (4) DEDUCTIONS FROM GROSS INCOME; FIRE DAMAGE PARTIALLY COVERED BY INSURANCE.

The taxpayer suffered a fire loss on December 16, 1936. The building was restored, personal property replaced, and insurance collected in 1937.

The taxpayer took credit for his uncompensated loss in his 1937 income tax return.

Section 290.09 (4) reads in part as follows: "Provided that deductible losses arising from fires shall be treated as sustained in the taxable year during which the property was injured or destroyed."

The commissioner properly found that the loss was sustained in 1936 and returned the amount claimed to the taxable income of the taxpayer. Valentine v Commissioner of Taxation, MBTA, August 2, 1942 (94), (no appeal).

290.09 (6) DEDUCTIONS FROM GROSS INCOME; ALLOWANCE FOR DEPRECIATION.

Taxpayer was an operator of coin or amusement machines and engaged in placing said machines in various locations and collecting a percentage of the money placed in said machines. Due to the relatively short life of the machines, the entire purchase price of same was deducted as a business expense in the taxpayer's federal and state income tax returns for the calendar years of 1936 and prior years.

At the suggestion of the federal government, the taxpayer in making up his tax return for the calendar year 1937 capitalized his machines and took depreciation on the machines according to a schedule suggested by the federal agency, instead of charging the entire cost off as a busines expense as was done in prior years. In making his state return, the taxpayer not only took the stated depreciation on his 1937 purchase but also deducted depreciation on equipment purchased in 1936 and prior years.

The commissioner properly assessed an additional tax against the taxpayer in the amount of the depreciation claimed on equipment purchased in 1936 and prior years.

It is clear that the taxpayer having taken a full depreciation in 1936 and prior years cannot, in 1937, expect to take a further depreciation credit having previously taken a 100 per cent depreciation. Stansfield v Commissioner of Taxation, MBTA, May 21, 1942 (85), (no appeal).

290.09 (10) DEDUCTIONS FROM GROSS INCOME; FAILURE TO FURNISH INFORMATION.

Taxpayer is a doctor engaged in the general practice of medicine and operates a hospital. In his individual income tax return for the calendar year 1938 there was included as a deduction under the item "Miscellaneous" $400.00 depreciation of the automobile used in business. The commissioner on May 28, 1942 and June 15, 1942, wrote to the taxpayer for an explanation of certain items and later notified the taxpayer of a proposed additional assessment cutting the $400.00 depreciation on the automobile down to $200.00.

Taxpayer was confined in a hospital for several months prior to June 26, 1942, the day he was released. There was delay in examining his accumulated mail, but on September 9, 1942, he advised the commissioner of his intention to furnish the requested information, and on September 17, 1942, called at the commissioner's office exhibiting his books and other data. The taxpayer was informed that since the order had been made, the taxpayer's only remedy was an appeal to the board of tax appeals.

There is no evidence of bad faith or attempt on the part of the taxpayer to conceal information from the commissioner. It is true he furnished the information requested belatedly and not until after the commissioner had made his final order. It is held that this dilatory action alone on the part of the taxpayer should not preclude him, upon a proper showing being made, from obtaining relief before the board. The commissioner is ordered to amend his order accordingly. Pogue v Commissioner of Taxation, MBTA, Feb. 4, 1943 (128), (no appeal).

290.13, Subd. 1 (3). TRANSACTIONS IN WHICH GAIN OR LOSS IS NOT RECOGNIZED.

The taxpayer in 1925 acquired a one-sixth interest in Arctic Nu Air; in 1928 the U. S. Blower and Heater Corporation acquired the assets of Arctic Nu Air, and taxpayer exchanged his interest in the former corporation for one-sixth interest in the new corporation. At that time the one-sixth interest in the new corporation had a book value of $16,000. In 1930 the U. S. Blower and Heater Corporation of Delaware was formed and took over the assets of the Minnesota corporation of the same name. The taxpayer retained a one-sixth interest in the capital stock of the Delaware corporation. On April 16, 1932, receivers were appointed for the U. S. Blower and Heater Corporation, and thereafter the receivers were licensed to sell and on January 21, 1933, the assets were sold to one Kopald who together with this taxpayer and others formed a new corporation known as the U. S. Air Conditioning Corporation.

In his 1937 income tax return the taxpayer, in figuring gain and loss on the sale of his stock, included as part of cost of the stock, the amounts he had invested in the prior corporations on the theory that he had acquired the stock in the U. S. Air Conditioning Corporation through reorganizations and that such investments remained equivalent and continuing under Section 290.13, Subdivision 1 (3). The taxpayer claims credit in the amount of $16,000.

Taxpayer also contends that in selecting the basis for determining gain or loss, he may proceed under Section 290.15 using the alternate basis of fair market value or cost as adjusted.

Kopald was not a stockholder in, or a creditor of, or a bondholder in, and was in fact in no way interested in the U. S. Blower and Heater Corporation. Kopald was a purchaser of assets at the sale. The taxpayer's contention failed because though he may have, as an individual, had in mind present continuity of interest, the statute provides affirmatively that that continuity applies only to a situation in which a party to a reorganization, in pursuance of a plan of reorganization exchanges his stock or securities in the original corporation for stock and securities in a successor corporation which is a party to the reorganization. The elements of compliance with the statute are not here present.

The order of the commissioner holding that the U. S. Air Conditioning Corporation was a separate and new corporation organized by a party not a stockholder or creditor in the predecessor corporation, who purchased the assets at receivership sale and that the provisions of Section 290.13, Subdivision 1 (3), are not here applicable and there was no continuity between taxpayer's interest in the prior corporation and the corporation whose stock he acquired in 1933, is affirmed. Feinberg v Commissioner of Taxation, MBTA, July 7, 1942 (65), (affirmed, 214 M 399, 8 NW(2d) 240).

290.15 BASIS FOR DETERMINING GAIN OR LOSS.

A return of cost of property or capital invested in property has an exempt status resting on fundamental law, and any conversion of that property, without profit, to money is capital not income. Subsequent change of form of capital by conversion into money does not change the essence. Applied to a case where the taxpayer's property was destroyed by the 1918 forest fire caused by a federal operated railroad, and was thereafter compensated by payments under a congressional appropriation. Dodge v Commissioner of Taxation, MBTA, Feb. 20, 1940 (8), (no appeal).

290.15 BASIS FOR DETERMINING GAIN OR LOSS FROM DISPOSITION OF PROPERTY ACQUIRED BEFORE JANUARY 1, 1933.

Where stock in a corporation was acquired by gift before January 1, 1933, thc fair market value of stock on such date constituted the basis for computing for income tax purposes capital gain or loss to the donee resulting from dissolution of the corporation prior to the enactment of Ex. Laws 1937, Chapter 49, Section 14. Capital gain or loss upon disposition of shares of stock must be computed by reference to methods and measures provided by the legislature, and not by reference to the stock market. Thorpe v Commissioner of Taxation, MBTA, Jan. 10, 1941 (19), (affirmed, 211 M 205, 300 NW 607).

290.15 BASIS FOR DETERMINING GAIN OR LOSS.

The taxpayer purchased real estate in 1914 at a cost of $3,000 of which $500.00 was the cost of the land and $2,500 was the cost of the building. Capital improvements were made thereon in the amount of $770.00. The taxpayer occupied the property as a residence until March 1, 1923, at which time it became rental property and remained such until it was sold in 1937 for $2,488.50. The taxpayer in reporting her 1937 income reported a net loss from the sale of said property in the amount of $66.97. The commissioner determined there was no loss but in fact a gain of $775.44. An adjustment was made by the commissioner who redetermined the gain as being $287.94. The commissioner in determining the gain and loss from sale of said property used adjusted cost as a basis and depreciated the cost of the building at the rate of two and a half per cent per year from January 1, 1914 to July 12, 1937, and depreciated the capital improvement items in the same manner.

Section 290.15 accords to the taxpayer the right of taking either fair market value or cost as a basis. Under that act the word "cost" was construed to mean "adjusted cost." The 1937 amendment further definitely provides that if the property was acquired before January 1, 1933, the basis, if other than fair market value is used, shall be diminished by the amount of exhausfion "actually sustained before such date." Construing related parts of Section 290.12, Subdivision 2, with Section 290.15, the order of the commissioner is sustained. Latz v Commissioner of Taxation, MBTA, Aug. 28, 1941 (58), (no appeal).

290.16 Subd. 2. DEDUCTIONS; LIMITATION; CAPITAL ASSETS.

The taxpayer was empowered by its articles to engage in the insurance, real estate and personal property brokerage business. In its 1938 income tax return, defendant took credit for $46,021.77 representing losses on the sale of four apartment buildings which it claims it "held primarily for sale to customers in the ordinary course of trade or business." The properties were acquired in 1924, 1931, and 1932. The earliest attempt to sell was in 1935. From 1924 to the date of sale in 1938, from 64 to 95 per cent of taxpayer's yearly income was made up of rentals.

The commissioner properly held that the four apartments were not held "primarily for sale," nor were they sold in the "ordinary course of the taxpayer's trade or business." The taxpayer is entitled to only the $2,000 statutory maximum credit allowable under Section 290.16, Subdivision 2. Lampert Investment Co. v Commissioner of Taxation, MBTA, Feb. 24, 1944 (142), (no appeal).

290.16, Subd. 2. DEDUCTIONS; LIMITATION; CAPITAL ASSETS.

During 1940 lands belonging to the taxpayer were forfeited to Minnesota for non-payment of taxes. Taxpayer, claiming $46,107.47 represented his cost basis, deducted under Section 290.09 (4) the full amount from his gross income for 1940 as an ordinary loss. The issue is whether a loss arising from forfeiture of lands to the state in 1940 is a capital loss subject to the limitation of Section 290.16, Subdivision 2, or is an ordinary loss deductible in full under the provisions of Section 290.09 (4).

The commissioner, sustained by the board, holds that the deduction comes under Section 290.16, Subdivision 2, and the $2,000 limit applies, and the taxpayer having used up the $2,000 exemption, the entire amount deducted from the taxpayer's gross income claimed because of the forfeiture in the instant case is restored to the taxpayer's taxable income. From this the taxpayer appeals. Drew v Commissioner of Taxation, MBTA, Sept. 27, 1945 (214), (appeal pending).

290.17 (1) GROSS INCOME TO BE ALLOCATED; PERSONAL SERVICES.

The taxpayer is a partner in an accounting firm, resides in Minneapolis, and is in charge of the Minneapolis office, one of seven such partnership offices in the United States. For the year 1939 he received a salary, interest on invested capital, and a distributive share of all partnership profits. The state contends that all of the taxpayer's income is subject to Minnesota income tax since it is received from a business consisting principally of the performance of personal or professional services. The taxpayer contends that he is not taxable in Minnesota on the distributive profits except to the extent that they may result from operations of the Minneapolis office.

The question presented is one of determining legislative intent. Each partner's distributive share of the partnership net income consisted: (1) the earnings being sufficient, of one annual salary which was credited in monthly instalments; (2) five per cent interest on the partner's contribution to the capital, and (3) his participation in any remaining profits, the ratio of participation being the same as his allotted ratio of participation in the partnership capital. This ratio did not apply to his annual salary which was fixed independently of his participation in capital and distributive profits.

The board holds that all money received by the taxpayer for the calendar year 1939 was income received from a business consisting principally of the performance of personal or professional services and the order of the commissioner, except for minor modifications, is in all respects affirmed.

Section 290.17 (1) is not limited to a tax upon "compensation for labor or personal services." The words used are "from a business consisting principally of a performance of personal or professional services." The language was placed in the law for a purpose and that purpose embraces the taxation of all the income received by the taxpayer from the partnership of which he was a member. The use of the capital is a material income producing factor but only because of the personal service of the partners. In view of the character of the business and the general continuity of partnership policy, the services of salaried personnel of other offices ought to be imputed to the respective partners who "direct, supervise, and control the offices." Bechert v Commissioner of Taxation, MBTA, Nov. 15, 1944 (179), (appeal to supreme court pending).

290.17 (2) GROSS INCOME TO BE ALLOCATED; GAINS FROM INTANGIBLE PERSONAL PROPERTY.

The business of the taxpayer, a Delaware corporation and licensed to do business in Minnesota, consisted of the holding of intangible personal property and the purchase and sale of securities and collection of income from said securities. It maintained an office in Minneapolis. In making its Minnesota income tax return for the fiscal year December 1, 1934 to November 30, 1935, the taxpayer contended it ceased doing business in Minnesota on May 1, 1935. Subsequent to May 1, 1935, all the intangibles and bank accounts of the taxpayer were located in New York and handled there under a power of attorney for corporate investment management account with depository account and supplemented by an investment advisory service of a New York company.

Under this statement of facts the taxpayer is not domiciled in Minnesota, and the income derived from its intangibles is not assignable to Minnesota. Canisteo Corp. v Commissioner of Taxation, MBTA, March 7, 1941 (17).

This decision was reversed, the supreme court holding "strictly, a corporation can be domiciled only in the state of its incorporation. But, because the legislative purpose so plainly requires, it is held that the word 'domiciled' as used in Section 290.17 (b), includes any corporation qualified to do business in the state." Canisteo Corp. v Spaeth, 211 M 185, 300 NW 596.

290.17 (2) GROSS INCOME TO BE ALLOCATED; DIVIDENDS FROM SUBSIDIARY CORPORATIONS.

The commissioner of taxation levied certain assessments against the taxpayer on account of dividends received by the taxpayer from certain subsidiary corporations. The taxpayer presented numerous motions relating to details of the various taxes laid. The board held that Sections 290.19 and 290.20 were constitutional. The board further, following the decisions of the Minnesota supreme court in Canisteo v Spaeth, 211 M 185, 300 NW 596; Cargill v Commissioner of Taxation, 215 M 40, 10 NW(2d) 728, held that the taxpayer was obligated to pay the tax assessed on account of dividends from subsidiary corporations and the board denied each of the motions above referred to. Archer-Daniels-Midland Co. v Commissioner of Taxation, MBTA, Dec. 1, 1942 (42), (no appeal).

290.17 (2) GROSS INCOME TO BE ALLOCATED; INTANGIBLES.

Taxpayer, during the taxable year involved, was a resident of Minnesota and owner of stock in a Minnesota corporation whose principal place of business was in Texas. During the taxable year the corporation declared dividends by distribution in kind payable by the assignment to stockholder of certain interests of composite reservations of oil to be produced from leased land in Texas. The interests so transferred are deemed real estate. The taxpayer contends that the dividends received by him constituted the receipt of tangible property having a situs outside of Minnesota and thus exempt from taxation.

The board holds with the commissioner that Minnesota has the recognized right, if it should choose to exercise it, to tax income from tangibles located outside the state; and that the receipt of the dividend, irrespective of the form in which it was paid in this instance, constituted income from the intangible property owned by the taxpayer, namely, the stock in the corporation which is taxable under the Minnesota income tax law. Westernhagen v Commissioner, MBTA, Nov. 26, 1941 (60), (no appeal).

290.17 (2) GROSS INCOME TO BE ALLOCATED; DIVIDENDS FROM SUBSIDIARY CORPORATIONS.

The taxpayer was a Delaware corporation licensed to do business in Minnesota wherein it maintained its principal place of business. Minnesota was its business domicile. It owned all the stock of three foreign corporations, namely, Cargill Grain Company of Illinois, Cargill Nebraska Company, and Cargo Carriers Inc., which did no business in Minnesota. It received dividends from each subsidiary during the taxable year 1936.

The commissioner properly held that dividends received from the three above named corporations during the taxable period at issue were properly included as taxable non-apportionable income of the Cargill Elevator Company and assignable in their entirety to the State of Minnesota.

Dividends received by a corporation having a commercial domicile within the state from stocks of its subsidiaries not employed in its, but in their, business was assignable to the State of Minnesota under Section 290.17 (2).

Where a corporation, organized under the laws of one state, transacts no business there and establishes its principal office in another, where it manages and directs the business, it acquires a commercial domicile there, in virtue of which it is subject to taxation there upon its intangibles, even though its business may extend into other states. Cargill Inc. and Cargill Warehouse Co. v Commissioner of Taxation, MBTA, Nov. 30, 1942 (108, 109, 110), (affirmed, 215 M 540, 10 NW(2d) 728).

290.17 (2) GROSS INCOME TO BE ALLOCATED.

Marshall-Wells Company, the taxpayer, is a New Jersey corporation licensed to do business in the state of Minnesota wherein it has its commercial domicile.

The taxpayer owns all the stock of three Canadian companies known as Marshall-Wells Co. Ltd., Marshall-Wells Alberta Co. Ltd., and Marshall-Wells B. D.

Ltd. Each of the three Canadian companies is engaged in the same business as is the taxpayer. The three Canadian companies operate in three Canadian cities while the taxpayer's principal place of business is in Duluth. The dividends paid on the stock of the three Canadian companies were received by the Duluth office and deposited initially in taxpayer's Duluth bank.

The commissioner held that the dividends received from the stock in the Canadian companies were properly included by the commissioner in the gross income of the taxpayer, and the board of tax appeals, following the decision in Cargill v Spaeth, 215 M 540, 10 NW(2d) 728, affirmed the order of the commissioner.

The supreme court reversed the decision of the board of tax appeals without overruling the rule laid down in Cargill v Spaeth, 215 M 540, 10 NW(2d) 728, and other like decisions. In the instant case the Canadian corporations involved "did not operate a business which in itself was subsidiary to the business of the taxpayer or conducted in furtherance of its activities. The Canadian corporations operated a parallel business wholly independent of the Minnesota domicile." There is a dissenting opinion.

A state may tax any privilege extended by it and may adopt any reasonable phase for its measurement, provided it does not require measurement thereof by property, or income from property, not within its jurisdiction and not used in connection with or correlated to any business authorized or conducted there.

A state may impose a tax on a foreign corporation commercially domiciled within its jurisdiction, based upon or measured by income from intangibles of such corporation which have acquired a business situs in said state, or which are correlated to and form an integral part of the business of said corporation there.

A state, however, may not impose a tax on a foreign corporation commercially domiciled within its jurisdiction when such tax is based upon or measured by income from intangibles of such corporation which have not acquired a business situs there and which are unrelated in every respect to the local business of said corporation within said state. Such tax is invalid under the due process clause of the 14th amendment to the Constitution of the United States.

Section 290.02 which imposes a franchise tax on foreign corporations measured by their taxable net income as computed under Section 290.17 (2) does not cover, and the legislature did not contemplate that it would include for such purpose, income from intangibles such as are involved in the instant case. Marshall-Wells Co. v Commissioner of Taxation, MBTA, August 15, 1944 (119, 120), (reversed, Marshall-Wells Co. v Commissioner of Taxation, 220 M —, 20 NW(2d) —).

290.17 (2) GROSS INCOME TO BE ALLOCATED.

290.18 COMPUTATION OF NET INCOME.

Taxpayer purchased two assignments of participating royalties in leases of oil and gas wells located in the state of California. Each assessment conveyed "one per cent participating royalty interest in all oil, gas and other hydro-carbonate substances produced, saved and sold from a certain well." The interest thereby conveyed was subject to certain charges.

The taxpayer in his 1937 return claimed a loss of the entire amount of his investment.

The commissioner denied the loss on the ground that the investments constituted an interest in real estate in the state of California and any loss therefrom was not deductible.

The issue is plain. If what the taxpayer purchased was a security he is entitled to the deduction. If it was an interest in real estate he is not entitled to a deduction.

Overwriting royalty agreements, participating royalty agreements or per cent assignments, by whatever name they may be called vary in their terms. The board reverses the order of the commissioner and determines that the property in the instant case does not constitute an interest in tangible property. It is significant that the assignor retains in itself the right to transfer the title or interest in the original lease. Willits v Commissioner of Taxation, MBTA, Aug. 29, 1942 (92), (no appeal).

290.18 (2) COMPUTATION OF NET INCOME; GROSS INCOME DEFINED.

The taxpayer is a corporation engaged in dredging and in its income tax return for the year 1939 took credit for certain deductions. The commissioner in determining the proper fraction of deductibility, construed the word "gross income" to mean gross receipts. The taxpayer contends the words "gross income" should have been construed to mean gross gain or gross profit.

The sole question for decision and determination by the board is as follows: The taxpayer claims an allocation fraction of 31.02 per cent. The commissioner contends that the allocation fraction should be 10.08 per cent. The difference is in the method of computation. The board in all respects affirmed the order of the commissioner, and the supreme court on appeal affirmed the holding of the board.

The term "gross income" as used in Section 290.18 (2) refers to total revenues of the business before the deductions allowed in Section 290.09 are made. Expenditures made for labor, material, and supplies in the performance of a dredging contract are "ordinary and necessary expense," incurred in carrying on the business within the purview of Section 290.09 and not an investment of capital assets.

Considering the relations of relator's expenditures and the purpose for which they were made, there is ample justification for the holding of the board that they were ordinary and necessary business expenses and not capital investment. Duluth-Superior Dredging Co. v Commissioner of Taxation, MBTA, Nov. 18, 1943 (113), (affirmed, 217 M 346, 14 NW(2d) 439).

290.19, Subd. 1. ALLOCATION OF TAX.

Taxpayer, an individual, resided in Minnesota, and was engaged in the business of selling diamonds and other jewelry in Minnesota and other states. During the year 1937, both taxpayer and his brother traveled in Minnesota and outside of Minnesota for the purpose of making sales. The traveler carried with him a stock of diamonds and when sales were made the merchandise was delivered at the place of sale. The sales made by him were final when made and there was no necessity for approval or acceptance by the taxpayer in St. Paul. Sales slips were made in triplicate, the original being delivered to the purchaser, the first duplicate original transmitted to the taxpayer in St. Paul, and the second duplicate original being retained by the salesman. The sales slips indicate the place and terms of sale. The salesman was paid on commission. Sales were also made by taxpayer in his place of business at St. Paul from which place he also filled mail orders. Taxpayer's gross sales for the calendar year 1937 amounted to $203,238.29. Of this total, $92,014 represents sales made by traveling salesmen outside the state of Minnesota to purchasers located outside of Minnesota with delivery made at the time of sale.

Pursuant to the provisions of Section 290.19, Subdivision 1, the taxpayer in filing his return for the calendar year 1937 determined that 54.726 per cent of his net sales were Minnesota sales, and 45.274 per cent were sales made outside the state of Minnesota, and paid a tax based on that percentage. The commissioner determined that 100 per cent of taxpayer's sales were Minnesota sales and assessed taxpayer an additional tax based upon the return to taxable net income of the percentage claimed by taxpayer to represent out-of-state sales.

The order of the commissioner assessing the taxpayer such additional tax and interest was reversed by the board.

To hold that the sales made by salesmen outside the state were not out-of-state sales because not made through an out-of-state office would be to place an illogical consideration on the statute. Clearly, the sales here in question were not made in Minnesota or through, from or by offices, agencies, branches, or stores within Minnesota. The sales were made by or through agencies outside the state. Ruvelson v Commissioner of Taxation, MBTA, Oct. 7, 1943 (89), (no appeal).

290.19, Subd. 1. ALLOCATION OF TAX.

Taxpayer is a Minnesota corporation engaged in the bakery business and is one of ten similar baking corporations called operating companies located in various states all wholly owned by the Purity Bakeries Corporation, a Delaware corporation. The operating companies are serviced by a third corporation, the Purity Bakeries Service Corporation, an Illinois corporation, which makes practically all the purchases of flour and other ingredients for taxpayer and other operating companies. The cost of operating the service corporation is prorated among the operating companies, and taxpayer's share is charged as administrative expense. The service corporation furnishes service at cost and at the end of the year shows neither profit nor loss.

Because of the saving effected through large scale purchases by the service corporation which are conducted wholly outside of Minnesota, the taxpayer contends it should be permitted to exclude from its Minnesota income an amount equal to five per cent of the total purchases for the year, the same being the fair and reasonable value of the profit producing function of purchasing carried on entirely outside the state.

The commissioner contends this is not a deductible item and cannot be excluded from taxpayer's income when applying the statutory apportionment formula. The board holds that the amount of $43,302.06, being five per cent of the amount of purchases through the service corporation during the taxable year 1940, was not a proper deduction from the income of the taxpayer and may not be excluded from the Minnesota income of the taxpayer as attributable or allocable to the activity of the service corporation outside of Minnesota.

The taxpayer in claiming this deduction is motivated by the fact that following precedent established by the tax commission in 1935 the commissioner has permitted this five per cent deduction during the years 1937, 1938, and 1939, and closed the tax liability of the taxpayer for those years on a five per cent deduction basis. While the decision of the commissioner in prior years is res indicata, it is not res judicata. The question at issue comes before the board on its merits. The board holds that the commissioner properly followed the formula established by Section 290.19, Subdivision 1. No showing or claim is made by the taxpayer suggesting a determination of the tax by any other method. The statutory formula provided by Section 290.19, Subdivision 1, is the method generally applied; and if an individual case produces unfair results, the law provides in Section 290.20 the use of other methods which more fairly reflect the income attributable to the state. The taxpayer has suggested no other method.

The enterprise of a corporation such as the taxpayer is ordinarily a unitary business. The difficulty of making an exact apportionment is apparent by the state having adopted a method not intrinsically arbitrary, and the method of computation used by the taxing agency will be sustained until proof is offered of an unreasonable and arbitrary application in a particular case. The present order of the commissioner comes before the board with the presumption of validity. The burden of establishing invalidity is upon the taxpayer. No proof of such arbitrary application appears in the record.

The income for which the taxpayer claims credit is the income of the taxpayer and not of the service corporation. The value of the service nowhere appears on the books of the service corporation or upon the books of the taxpayer. The books of the taxpayer show no payment or credit to the service corporation. The books of the taxpayer show a certain profit all of which it retained and no part of which it paid out. It is income to the taxpayer by any definition. To permit the taxpayer to arbitrarily exclude a part of its income from its return and allocate the amount excluded to someone else certainly has not been authorized by legislative enactment or by any decision of the courts. Purity Baking Co. v Commissioner of Taxation, MBTA, August 30, 1945 (211, 212), (no appeal).

290.19, Subd. 1 (1) (b). ALLOCATION OF TAX.

Taxpayer manufactures printing presses in Minnesota and sells the greater part of its product without the state. For the most part it sells for ten per cent down and unpaid portion on conditional sales contract or secured by chattel mortgage.

The taxpayer contends that the tangible property factor in the fraction apportioning income to Minnesota should include the property so sold. The commissioner contends these values are not properties "owned and used by the taxpayer in connection with its trade or business." The contention of the commissioner is sustained. The fact that the taxpayer has proper legal title in and of itself is not sufficient to constitute ownership of the property within the meaning of Section 290.19, Subdivision 1 (1) (b). Under the terms of sale the taxpayer at most has a naked legal title. It has no other rights unless or until default occurs. Brandtjen & Kluge v Commissioner of Taxation, MBTA, July 12, 1944 (164), (no appeal).

290.19, 290.20 NET INCOME TO BE ALLOCATED; METHODS PRESCRIBED.

Taxpayer, a Delaware corporation, is engaged in manufacturing and selling meat products, within and without the state of Minnesota. For the year 1935 the taxpayer disclosed a Minnesota income tax in the amount of $644.30. The Minnesota tax commission determined that Section 290.19 did not apply and proceeded under Section 290.20 and attempted to apply the so-called multiple factor formula. The taxpayer, acting on advice of counsel, refused the commission access to its books, and thereafter on September 8, 1938, the commission assessed an arbitrary income tax based on the total net income of the taxpayer.

After protest by the taxpayer the present commissioner on May 12, 1942, fixed the tax at $3,236.71 basing the tax on authority of Section 290.20 and arrived at the result by allocating to Minnesota that part of the total corporate income equal to a ratio of the "sales from Minnesota plants" to total company sales.

The taxpayer appealed, and the board held that the determination made by the commissioner in the amount of $3,236.71 is a valid and proper determination, and the order of the commissioner was affirmed.

The delegation granted by Section 290.20 is not an unconstitutional delegation of legislative power but a necessary delegation of power to meet a need which cannot possibly be met by legislative enactment and the exercise of which is limited by, and restricted to, reasonably known and understood standards of conduct. Wilson & Co. v Commissioner of Taxation, MBTA, Dec. 23, 1943 (115), (no appeal).

290.20 COMMISSIONER TO PRESCRIBE METHODS.

The taxpayer corporation has its principal place of business in Detroit, Michigan, and deals through that office, and 120 company operated branches throughout the United States and subsidiary corporations in England and Canada.

As Section 290.19 did not apply, the commissioner computed and assessed a tax against taxpayer by a three-factor formula of tangible property, payroll, and sales, allowable under Section 290.20.

The taxpayer in the instant case contends that the commissioner had no authority to apply the non-statutory formula used.

It is conceded that the application of the single factor formula of sales, under Section 290.19, would not be applicable.

While the authority under Section 290.20 permitting the commissioner to use "other methods" is a broad grant, it is in line with other authority to use administrative discretion and does not amount to a delegation of power to make law.

The order of the commissioner comes to the board with the presumption of validity. The burden of establishing invalidity is on the taxpayer. The separate accounting system proposed by the taxpayer is fair, clear, useable, and convincing. The result varies but slightly from the three-factor formula used by the commissioner. It is "practicable" and "properly reflects the taxable income." Section 290.20 in the instant case demands that the separate accounting method suggested by the taxpayer be used. Burroughs Adding Machine Co. v Commissioner of Taxation, MBTA, June 6, 1944 (93), (no appeal).

290.20 TAXPAYER TO DETERMINE NET INCOME.

The taxpayer was subjected to renegotiation of excessive profits for the taxable year ending November 30, 1942. By contract, dated October 29, 1942, it was determined that taxpayer's excess profits for the taxable year would amount to $4,996,726.78, which sum the taxpayer agreed to rebate to the United States treasury. Because taxpayer's profits for the final three months of the taxable year were estimated and not actual, there was provision for a final audit. This audit, made February 20, 1943, determined additional excess profits in the amount of $77,206.01.

The taxpayer, being on the accrual basis, deducted $4,996,726.78 from its 1942 income. The commissioner returned the sum to the taxable income, contending it was not properly taxable until 1943, there being no final determination under the renegotiation during the taxable year 1942.

The order of the commissioner, insofar as the return of the $4,996,726.78 to net income and additional assessment thereon, is reversed. As applied to the facts in the instant case, a holding that the agreement of October 29, 1942, was not a final determination within the intendment of Section 290.20 would be to ignore other sections of the income tax act and the principles of income taxation. To hold that such agreement was a final determination is to harmonize this section with the rest of the law and avoids any unjust or unreasonable results. It should be noted that while the October 29 agreement provided the possibility of increasing the tax, there was no provision for any decrease even though the fourth quarter operations developed a substanitial loss of income. American Hoist & Derrick v Commissioner of Taxation, MBTA, Oct. 24, 1944 (195), (no appeal).

290.21 (3) CREDITS AGAINST TAX; SUBSIDIARY CORPORATION FORMULA.

The general purpose of Section 290.21 (3) is to avoid double taxation and to exempt from the income tax of the stockholder dividends from earnings on which the dividend-paying corporation has already been taxed. Where a corporation has all of its activities within the state, the state permits a dividend credit of 100 per cent against the taxable net income of the recipient shareholder. Where the dividend-paying corporation did business partly within and partly without the state of Minnesota, a formula was adopted to determine how much of its dividends were to be allowed as credit. The taxpayer is a Delaware corporation, licensed to do business in Minnesota. It contended in making its return that no part of the $60,000 in dividends from the Washington Wood Preserving Company was assignable to the state of Minnesota.

The order of the commissoner, insofar as it allowed the taxpayer a dividend credit upon dividends of the Washington Wood Preserving Company in a percentage of 17.77, is reversed and said order amended allowing the taxpayer a dividend credit of the percentage of 26.75 of the amount of dividends received from said company. The term "net income" as used in the statute is deemed to be what is considered net income for tax purposes. Pendleton-Gilkey Co. v Commissioner of Taxation, MBTA, Jan. 8, 1941 (35), (no appeal).

290.22 TAXES ON INCOME FROM ESTATES.

A statute is to be inforced literally as it reads, if its language embodies a definite meaning which involves no absurdity or contradiction, and, further, unless obviously used in a different sense, words in a statute are to be construed in their ordinary popular sense, and according to the common and approved usage of the language. The dispute between the parties involves the construction of the word "included" in Laws 1933, Chapter 405, Section 28(f) (Repealed L. Ex. 1937, c. 49).

The commissioner properly found that the dividend credit be limited to the amount of trust income actually received by the beneficiary. The legislature did not intend that a larger amount should be "included" in a smaller one. Vandever v Commissioner of Taxation, MBTA, Oct. 29, 1940 (32), (no appeal).

290.31 TAXATION OF PARTNERS.

The distributive share of a partner reporting income on calendar year basis in net income of partnership which reported income upon fiscal year basis was determinable only at end of partnership's accounting period, regardless of whether partner's share was distributed monthly, and he was required to compute tax on his share solely by reference to rates applicable for partner's calendar year, and could not apportion old and new rates under statute allowing this to be done by fiscal year taxpayers.

The "period" referred to in income tax provision that tax imposed on the taxpayer for a "period" beginning in one calendar year and ending in the following calendar year shall be determined by application of rates for the two different years in their proper proportions is a tax year of 12 months, and the statute is applicable to only those taxpayers reporting income on a fiscal year basis. Byard v Commissioner of Taxation, MBTA, Feb. 20, 1940 (3), (affirmed, 205 M 215, 296 NW 10).

290.31 PARTNERSHIPS NOT TAXED.

Taxpayer and his brother were members of a copartnership which during the taxable year sustained a loss. The taxpayer in his individual return claimed that he was entitled to credit to the amount of the $2,000 capital loss allowed, less his distributed share of the income of the partnership; while the commissioner contends that the partnership is a business entity and the partnership itself is limited to the $2,000 capital loss provision.

The order of the commissioner is reversed.

Reading Sections 290.01, Subdivision 6, 290.16, Subdivision 2, 290.31, together, it is the determination of the board that Section 290.16, Subdivision 2, limits the loss to $2,000 to each taxpayer. If the legislature intended to limit a partner to his proportionate share of the $2,000 loss, it should so affirmatively state. Atwood v Commissioner of Taxation, MBTA, Oct. 16, 1942 (104), (no appeal).

290.49, 290.53 ASSESSMENT OF TAX; INTEREST AND PENALTIES.

The taxpayer, by occupation a lawyer and teacher, in her income tax return for 1936 reported income of $2,403 from teaching, $188.50 from law business, and $108.00 from rents.

During the year 1916 this taxpayer and a client entered into an oral agreement whereby the taxpayer was to perform all legal work for the client at her request during her lifetime, and in return for such services the taxpayer upon the death of her client was to receive from the client's sister the sum of $10,000 for the services rendered during the client's lifetime. The client died in 1936 and this taxpayer was paid $10,000, and this $10,000 was not reported by the taxpayer in her income tax report.

The commissioner contends that the 1936 income tax return of the taxpayer was false and fraudulent, and under the provision of Section 290.49 (1) of the Minnesota income and franchise act of 1933 the commissioner assessed the taxpayer with a tax upon said item of $10,000 and a further penalty of 25 per cent.

The board holds that the $10,000 received by the taxpayer in 1936 was income for the calendar year 1936; that the failure of the taxpayer to include said amount in her tax return was willful and deliberate and amount to fraud, and under the provisions of Section 290.53 the penalty is allowable.

The order of the commissioner both as to the assessment of the tax and the application of the penalty clause is affirmed by the board. Williams v Commissioner of Taxation, MBTA, April 21, 1943 (118), (no appeal).

290.49, Subd. 1. ASSESSMENT OF TAX; LIMITATION.

The commissioner audited the taxpayer's 1937 income tax return in July, 1941, and on September 8, 1941, mailed his order dated September 2, 1941, assessing the taxpayer an additional tax.

This was well within the statutory period of three and one-half years, and the action of the commissioner was in every way legal and regular and must be sustained. Valentine v Commissioner of Taxation, MBTA, August 2, 1942 (94), (no appeal).

290.50, Subd. 1. REFUNDMENT; CLAIM FOR OVERPAYMENT; RECOUPMENT.

The taxpayer suffered a fire loss on December 16, 1936, but the exact extent of the loss was not determined until 1937 when the building was restored, personal property replaced, and certain insurance recovered. The taxpayer claimed the loss in his 1937 income tax return. Under Section 290.09 (4) the loss occurred in 1936.

Under Section 290.50, Subdivision 1, the taxpayer is required to file his refunds within "two years after such tax was paid or collected." The taxpayer failed to file such claim for refund within the statutory period. A refund cannot be awarded to him.

The doctrine of recoupment does not apply. There was no misconduct or procedural error on the part of the taxing agency. The action of the commissioner throughout was strictly in accordance with the law. Valentine v Commissioner of Taxation, MBTA, August 2, 1942 (94), (no appeal).

TAXES ON INHERITANCE, DEVISES, AND REQUESTS

291.01, Subd. 1 (3). INHERITANCE OR GIFT TAX IMPOSED.

The taxpayer's mother made a gift of certain securities to the taxpayer and died three weeks later. On the probation of her will, the taxpayer received the entire estate, with the exception of a few small bequests. The probate court determined the taxpayer to be the owner of the securities transferred by gift and did not include their value in the inventory and appraisal of the estate. The inheritance tax on the estate and the gift tax on the instant gift were paid.

The commissioner of taxation determined that the value of the securities transferred as a gift should have been included in the value of the estate since their transfer was made immediately prior to the death of the decedent and was therefor a transfer in contemplation of death. The commissioner ordered payment of an additional inheritance tax and from that order the taxpayer appeals. The issue is whether or not the transfer in the instant case was made in contemplation of death. Laws 1939, Chapter 338, brings the wording of Minnesota statutes substantially in accord with the federal act. The rule is almost universal that the factor which determines whether or not a transfer is made in contemplation of death within the meaning of the inheritance tax laws is whether the dominant or impelling motive of the transferer in making the gift has the thought of death and a desire to anticipate the event by a distribution of his property. Where the motivating cause for transfer is something other than the transferer's contemplation of death, be such cause laudable or otherwise, the statute can have no application and the transferred property may not be included for taxation in the transferer's gross estate. The statute under which this tax is sought to be imposed creates no presumption that gifts made within a period of two years prior to death are presumed to be in contemplation of death; and the taxpayer has introduced sufficient facts to prove that the instant transfer was a pure gift inter vivos and was not made by decedent in contemplation of death.

The order of the commissioner is reversed. Donaldson v Commissioner of Taxation, MBTA, Aug. 12, 1942 (67), (no appeal).

291.01, Subd. 4 (1). TAX IMPOSED; JOINTLY OWNED PROPERTY.

Taxpayer furnished the entire consideration for the purchase of certain property, part of which was put into joint tenancy with her daughter prior to the effective date of Laws 1935, Chapter 334, and part thereafter. The daughter died in 1939, her estate consisting of the 25 certificates of stock placed in joint tenancy as above stated, and valued at $13,751.89.

The legislature clearly intended to tax a survivor (the taxpayer in this instance) only on that portion of the property she received for nothing and to except from taxation that part shown to have originally belonged to survivor. Where a survivor has furnished the entire consideration for the joint tenancy property, no tax is due and this rule applies as well to property put in joint tenancy prior to April 29, 1935, as to property put in joint tenancy after that date. McCormack v Commissioner of Taxation, Feb. 21, 1941 (48), (no appeal).

291.01, Subd. 4 (1). TAX IMPOSED; JOINTLY OWNED PROPERTY.

Taxpayer's mother, a resident of Illinois, placed certain property which she owned into joint ownership with the taxpayer who resided in Minnesota and who furnished no part of the consideration. Shortly thereafter the mother became a legal resident of this state.

Upon the mother's death in Minnesota in 1942, the commissioner determined that the right of the transfer as survivor to the immediate ownership of the property was a transfer subject to the inheritance tax laws of Minnesota and in this order determining inheritance tax included as the measure of the tax the full value of the jointly owned property. The taxpayer appeals from this order contending that since the property was placed in joint tenancy in Illinois, the commissioner should have included no more than one-half the value of this property for inheritance tax purposes.

The board affirmed the order of the commissioner in all respects.

The words in the act, "except such part thereof as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by them from the decedent for less than an adequate and full consideration in money or money's worth," would be meaningless unless they had reference to the full value of the property. Dillon v Commissioner of Taxation, MBTA, May 13, 1943 (112), (no appeal).

291.01, Subd. 5. TAX IMPOSED; LIFE INSURANCE POLICIES.

Leo M. Crafts took out a policy of insurance payable to his wife, Amelia B. Crafts, and in his nomination of beneficiary specified that upon his death the proceeds of the policy were to be retained by the company, paying the interest income quarterly to his wife during her life. She was privileged to withdraw all or any part of the money at any time. Upon the death of the wife, any sum not withdrawn was to be paid to Lettie C. Marin and another, or to the survivor. Upon the death of Leo M. Crafts, his wife surrendered the policy and the insurance company paid her $72.45 and issued a non-negotiable certificate of indebtedness for $4,900. The certificate recited the conditions of the policy, Lettie C. Marin being specified beneficiary. Upon the death of Mrs. Crafts, the $4,900 was paid to Marin. The commissioner determined that this was a transfer of property subject to an inheritance tax.

The order of the commissioner is reversed.

Mrs. Crafts did nothing to make the insurance payable to Marin. The proceeds of the policy never became part of her estate. The money was paid to Marin because the terms of the insurance policy so provided. It was proceeds of an insurance policy, and being within the exempt limit as to amount is not taxable. Blackburn v Commissioner of Taxation, MBTA, July 12, 1944 (184), (no appeal).

291.02, 291.04. RATE OF TAX; EXCESS RATES.

The taxpayer received as beneficiary under a life insurance policy on her husband's life the sum of $50,376. Ten months prior to her husband's death the policy had been irrevocably assigned to the taxpayer as beneficiary and to her children as contingent beneficiaries. The policy at the time of its assignment had a cash surrender value of $5,453.33.

In determining the amount of inheritance tax after the death of the taxpayer's husband, the probate court did not include the proceeds of this policy in the amount of taxable transfers. The commissioner of taxation determined that the entire proceeds of said insurance policy amounted to a transfer under Ex. Laws 1937, Chapter 53, Section 3, and returned the amount thereof to net taxable transfers and assessed an additional tax thereon. The taxpayer appealed from the order of the commissioner and the board of tax appeals affirmed the order of the commissioner.

It is held that Ex. Laws of Minnesota 1937, Chapter 50, Section 3, is constitutional. The taxpayer contends that at the time of the gift its value was only $5,453.33, and the transfer was irrevocable and the gift tax, if any, should be based on the value of the gift at the time it was made. The board holds that no gift tax was assessable at the time the gift was made because of exemptions in force. It is true that this taxpayer could have surrendered the policy and collected the cash surrender value prior to the death of her husband, but realistically she did not do it. Moreover, if the taxpayer had predeceased her husband, her rights under the policy were gone. Until she exercised her right to claim a cash surrender value, there always remained the contingency that her prior death would terminate her rights. DeCoster v Commissioner of Taxation, MBTA, Nov. 20, 1942 (111), (affirmed, 216 M 1, 11 NW(2d) 489).

291.11, Subd. 2. WHEN EFFECTIVE; DETERMINATION OF VALUE.

Taxpayer and her mother in 1936 and in 1937 purchased two annuity contracts, both payable in monthly instalments to the mother for her life and upon her death to the daughter for life. Each furnished one-half of the consideration. The mother died in 1940, and by order on August 7, 1942, the commissioner determined the succession to the annuity contract by the taxpayer amounted to a taxable transfer.

The board held the tax properly ordered, but directed the commissioner to recompute and modify the amount.

The inheritance is not a tax on property, but upon the right of succession thereto. This is in accordance with federal holdings. The tax imposed in the instant case is no different from a tax imposed upon the succession by the survivor of the right to enjoy property held in joint tenancy.

To compute the tax the taxing agency must determine what would be the cost of purchase of an annuity of $169.58 per month at the date of the taxpayer's succession, and after deducting one-half of that amount, because the taxpayer furnished one-half of the original consideration, assess an inheritance tax on the balance.

Section 291.11, and not the method of computation used by the commissioner, is mandatory and the commissioner must amend his order accordingly. Stewart v Commissioner of Taxation, MBTA, March 7, 1944 (125), (no appeal).

GIFT TAXES

292.05 to 292.07 SPECIFIC EXEMPTIONS; COMPUTATION OF TAX; RATES.

In each of the years 1938 and 1939 the taxpayer gave the donee $12,500, and in 1941 after she became his wife he gave her $43,736. When she received the first two gifts she was a Class E donee, and in 1941 a Class A donee. Taxpayer contends that the commissioner erred in taking the aggregate sum of the three gifts since, although in each instance the recipient was the same person, because of the change from Class E to Class A, she was not the same donee as contemplated by the statute.

It is held that the words "same donee" as used in the statute, as far as this particular donee is concerned, mean the same person, and the commissioner correctly included in the computation of the tax, the aggregate amount of all gifts made to said donee. Putnam v Commissioner of Taxation, MBTA, Feb. 9, 1944 (148), (no appeal).

SLEEPING CAR AND FREIGHT LINE COMPANIES

295.01, Subd. 7. SLEEPING CAR COMPANIES.

The taxpayer, a sleeping car company, was assessed additional franchise taxes covering the year 1936 pursuant to the provisions of Laws 1933, Chapter 405, which it paid and in these proceedings petitioned for refund. The petition was denied and this is an appeal from the commissioner's order denying the refund. The taxpayer contends: (1) That the legislature did not intend to tax the Pullman Company; (2) that as concerns this taxpayer, the franchise tax is a violation of the state constitution in that it is an amendment to the railroad gross earnings tax without having been approved by a vote of the electorate; (3) that the tax violates the uniform provision of federal and state constitutions.

The state contends there is ample legislative intent combined with effective legislation adopted within the tax framework permitted by the constitution.

For many years the taxpayer was subject to a five per cent gross earnings tax which was "in lieu of all taxes and assessments upon all taxable property in the state of said company." Laws 1933, Chapter 405, Section 5, specifically exempts certain corporations but sleeping car companies were not exempted.

Railroads are specifically exempted from the income tax law by the constitution. Sleeping car companies have no constitutional protection.

This taxpayer's income comes from ownership of sleeping car companies and not from ownership or operation of railroads. Following other Minnesota decisions, this board rejects the suggestion of unconstitutionality because there was no vote of the people, and the constitutional provision relative to uniformity has no application. The order of the commissioner denying the refund is in all things affirmed. Pullman Co. v Commissioner of Taxation, MBTA, Sept. 5, 1944 (152, 153, 154), (appeal pending in supreme court).

295.24 FREIGHT LINE COMPANIES TO PAY SEVEN PER CENT ON GROSS EARNINGS.

The appellants, 22 freight line companies hereafter designated "taxpayers," contend that the gross earnings tax on freight line companies is unconstitutional in its application to them and the order of the commissioner issuing and certifying the tax against them is void and unenforcible: (1) Because the statute authorizing the tax has set up an arbitrary, unjust and unreasonable classification; (2) the method adopted by the statute and the commissioner in arriving at the sound, reasonable or fair market value of the property is unfair, discriminatory and arbitrary resulting in excessive valuation of the property and exacting a greater tax than is exacted from owners of similar property of the same general class and kind; (3) the property of taxpayers has already been taxed by the state and a tax paid through the imposition of the railroad gross earnings tax; and (4) the statute imposing the gross earnings tax on freight line companies was in substance and effect a law providing for the amendment of the Minnesota railroad gross earnings tax law and was never submitted to a vote of the people as required by Minnesota Constitution, Article 4, Section 32a.

The board held that the order of the commissioner dated May 11, 1940, denying the petitions and protests of each of the taxpayers be upheld.

Minnesota Constitution, Article 4, Section 32a, is applicable only to legislation affecting or changing taxation of common carrier railroads owning and operating lines of railroads within or through the state.

The classification of relators as freight line companies subject to taxation under Sections 295.01 to 295.28 does not contravene the uniformity and equality guaranteed by the state and federal constitutions. Almer Railway Equipment Co. v Commissioner of Taxation, MBTA, Nov. 8, 1941 (46), (affirmed, 213 M 62, 5 NW(2d) 637).

OCCUPATION TAX ON MINING

298.03 (4) VALUE OF ORE; HOW ASCERTAINED.

Where lessor and lessee of two separate mining leases providing for advance royalty payments transferred by written agreements executed in October, 1937, and June, 1938, advance royalty payments credited to one lease, and on which royalty tax had been paid, to second lease having no advance royalty credits, lessee was entitled to have the amount of royalty credits so transferred deducted in determining occupation tax on ore mined during 1938 from mine covered by the second lease. Advance royalty credits transferred from one to second of two separate mining leases made by lessor to same party were not rendered nondeductible in computing occupation tax on ore mined from a mine covered by a second lease on the ground that such credits became a lien upon land on mine leased, where royalty tax had been paid on credits so that there could be no lien. State ex rel v Commissioner of Taxation (Mesaba-Cliffs Mining Co., Intervener), MBTA, June 25, 1940 (12), (affirmed, 209 M 150, 295 NW 652).

TAX UPON ROYALTIES RECEIVED FOR PERMISSION TO REMOVE ORE FROM LAND

299.01, 299.02 TAX ON SEVERANCE OF ORE FROM LAND; RATE; ROYALTY DEFINED.

Under lease dated December 30, 1916, the Sutton Land Company, fee owner of a mine, leased same to the Orwell Iron Company; and from 1921 until the cancelation of the lease on December 31, 1934, the lessee in the course of operation removed certain non-merchantable ore and left same in stock piles on the premises. No royalty was paid to the fee owner and no royalty tax was paid during the existence of the lease. Upon cancelation of the lease the title to the stock pile ore reverted to the Sutton Land Company.

Under date of June 1, 1935, the Sutton Land Company sold to the taxpayer in the instant case said stock pile ore, and it was agreed that when the ore was loaded into railroad cars, the taxpayer was to pay 25c per ton and to pay all royalty tax if any assessed against the ore, but the vendor was to pay all real estate taxes.

For several years the taxpayer paid the royalty tax under protest.

On December 23, 1938, the Sutton Land Company sold the fee to the mine subject to the agreement with the taxpayer.

The present litigation arose over the commissioner's order demanding payment of the tax assessed in 1939.

The board holds that the fact that a person has paid an illegal tax does not preclude him from objecting to the continuance of exaction in the future. Even though it is the legislative intent to assess a tax on all ore, the fact that no tax has been paid on this stock pile ore does not necessitate a construction that will secure the collection of this tax.

The words "for permission to explore, mine, take out and remove ore from the land" as contained in Section 299.01 describes the process of mining. Under the agreement under consideration the ore in question had been mined previous to the time of the June, 1935, agreement. The word "remove" refers to but one of the steps involved in the process of mining. The royalty tax is a tax on the interest in the ore lands of the owner who has granted to another "the right to mine ore for a stipulated consideration." The agreement herein cannot be construed as granting right to mine ore or as a permission to extract ore.

The two orders of the commissioner determining taxes due from the taxpayer are reversed. Argonne Ore Co. v Commissioner of Taxation, MBTA, April 17, 1941 (41), (dismissed).

299.08 LIEN OF TAX.

Intervener was the lessee in each of two separate mining leases providing for minimum advance royalty. The lessor was the same party in both leases. In the lease to the Holman-Brown mine there were advance royalty credits of $469,-492.56, on January 1, 1938. In the lease to the Canisteo mine there were none. On October 1, 1937, and on June 14, 1938, by written agreements, the lessee and lessor transferred or applied the advance royalty credits from the Holman-Brown lease to the Canisteo lease. In determining the occupation tax of Mesaba-Cliffs Mining Company, intervener, on the ore mined during 1938 from the Canisteo mine, it was entitled to deduct the royalty credits so transferred or applied by agreement. State ex rel v Commissioner of Taxation (Mesaba-Cliffs Mining Co., Intervener), MBTA, June 25, 1940 (12), (affirmed, 209 M 150, 295 NW 652).