CHAPTER 289

REGISTERED TONNAGE, VESSELS NAVIGATING INTERNATIONAL WATERS

289.01 REGISTERED TONNAGE, REPORT; TAX, DISTRIBUTION

HISTORY. 1895 c 224 s 1; RL 1905 s 1038; 1919 c 505 s 1; Mason's 1927 s 2291; 1953 c 485 s 1.

International waters are waters common or affecting two or more nations and, as far as Minnesota is concerned, includes Lake of the Woods, Rainy River, Rainy Lake, Namakan Lake, and Lake Superior. OAG June 18, 1953 (421-C-4).

INHERITANCE, GIFT, INCOME, FRANCHISE

CHAPTER 290

INCOME TAXES, FRANCHISE TAXES

290.01 DEFINITIONS

HISTORY. 1933 c 405 s 1, 10, 11, 21, 22; Mason's 1927 s 2394-1, 2394-10, 2394-11, 2394-21, 2394-22; Ex1937 c 49 s 16; 1941 c 550 s 4, 11; 1943 c 656 s 1, 11; 1945 c 604 s 1, 2, 19; 1947 c 635 s 1; 1949 c 541 s 1; 1949 c 734 s 1, 2, 3; 1953 c 648 s 1.

NOTE: Those advocating the adoption of the wide open tax amendment of 1906 claimed, among other things, that it would permit of the adoption of an income tax. Our present income and franchise tax law was enacted in 1933. Its constitutionality was sustained in Reed v Bjornson, 191 M 254, 253 NW 102. The 1943 amendment applies to the taxable year ending in 1939 and to subsequent taxable years. The 1953 amendment applies to all taxable years, beginning after Dec. 31, 1952.

Appraisal of Laws 1943, Chapter 656 relating to amendments to the income and franchise taxes. 31 MLR 82.

Residence or domicile as it relates to income taxes. 31 MLR 630.

Taxation of trust income when agreeable to the beneficiary. 31 MLR 297.

Exemption of bona fide resident of foreign country from federal income tax. 32 MLR 842.

Estate and gift taxes. 36 MLR 918.

Federal income tax; amount paid by stockholder after liquidation in satisfaction of transferee liability as a capital loss. 36 MLR 984.

Federal income tax; change of accounting method for accounting income. 36 MLR 985.

Stock dividends as income for tax purposes. 36 MLR 174.

Payment to the office of price administration of overcharges inadvertently exacted from customers of taxpayers in violation of regulations of such office as being deductible as a business expense in computing federal income taxes. 34 MLR 373.

Taxability of stock dividends. 36 MLR 789.

Property right in an idea. 37 MLR 493.

Payment of income taxes under securities exchange act. 37 MLR 495.

While the Minnesota income tax act of 1933, as amended, follows quite closely the federal law, there are differences. Notable differences discussed. 38 MLR 1.

There must be a partnership in reality and not a mere pretense of one to entitle the partners to divide the income tax burden according to their respective interests as they appear on the face of the articles of partnership; and where a father as sole owner conveyed undivided interests in realty occupied by business to each of six children, some of whom were minors, and upon appointment as guardian, transferred the property of minors to a partnership of himself and other children under agreement limiting partnership of minors, preventing assignment of their interests and subjecting their share of the profits to the decision of others, the minors performing no service and contributing no capital and not active in the business, the partnership income of the minors was taxable to the father. State v Hitchcock, 228 M 335, 37 NW(2d) 378.

Howard E. Stevens, Sr. on Feb. 21, 1936, created trusts in favor of each of his two children. Each child was of full age, married, and without issue. Howard E. Stevens, Sr. was the sole trustee in each case. For the year 1941 each of the two trusts received an income in the sum of $4,140. In his return, Howard E. Stevens, Sr. separated the trust incomes from his own personal income, making separate returns. Although the trust instruments declare the trusts to be irrevocable, the donor or grantor in the instant case under the terms of each trust receives sufficient discretionary power under certain conditions to determine from among several persons who should in fact receive the corpus and the income from the trusts. The commissioner properly held that under the provisions of M.S.A., Section 290.01, Subdivision 20, the trusts were revocable in that the income is distributable to the grantor in his discretion and the income is therefore taxable to the grantor. The commissioner properly returned the sum of $8,280 to the grantor's taxable income. Howard E. and Mabel Stevens, MBTA, April 28, 1948 (250).

Residence and domicile are not always identical terms. Residence may simply require bodily presence in a place, while domicile requires bodily presence in the place coupled with an intention to make it one's home. The domicile of origin is the domicile assigned to every child at its birth. Every person at all times has one domicile and no person has more than one domicile at a time. A domicile once established continues until it is superseded by a new domicile. In the instant case, the taxpayer was born in Minnesota on Aug. 12, 1920, resided with his parents on a farm near Osakis until 1938, and during 1939 and 1940 was employed in Hampton, Iowa and Hollywood, California, returning to his home to have an operation performed January, 1941. After recuperating he was employed for a time at Pontiac, Michigan, returning later to Osakis. In August, 1943, he joined the merchant marines in Minneapolis, listing his home as Osakis, Minnesota. He remained in the government service until his reutrn to Minnesota where he was repatriated and hospitalized in the United States from April 8, 1948 to June 2, 1948. The taxpayer voted for the first time in 1948 in Minnesota. He was married in January, 1949, and he and his wife have continued to live in Minnesota. The question arises as to whether or not he was at any time domiciled in the Philippine Islands and exempt from the payment of income tax because of that fact. The commissioner properly assessed the taxpayer on income tax for the years 1944, 1945, 1946, and 1947, and held that during all those years the taxpayer was domiciled in Minnesota. Darwin W. Schultz v Commissioner of Taxation, MBTA, June 26, 1951 (371).

Taxpayer residing with his wife and family at Wegdahl, Minnesota, deducted $4,713.50 as wages obtained in Alaska during the year 1943. During the time petitioner was in Alaska he lived in tents, as did other like employees while his wife and family continued to live in Wegdahl where his wages under the federal act were paid to her. It is held that the taxpayer was domiciled in Minnesota during all of the time he was employed in Alaska, and the commission properly returned the entire amount claimed deduction to the income of the taxpayer and assessed an additional tax thereon. To acquire a new domicile of choice there must be a residence in new lo-

cality together with the intention there to remain. The facts in the instant case show no intention to permanently remain in Alaska, and clearly show his intention to return to Wegdahl at the end of the term of his employment. The holding of the commissioner is affirmed. Connor v Commissioner, MBTA July 8, 1948, 315.

The taxpayer and his family resided in Minneapolis. He lost his position by reason of the liquidation of the company he was working for and after some delay in December, 1942, accepted a similar position in Utah and continued working on a salary until May, 1943. While in Utah the taxpayer and his family lived in rented quarters. During the ten months he was in Utah they made no effort to dispose of their homestead in Minneapolis and the family furniture was stored. The taxpayer neither registered nor voted in Utah and during all the time retained a checking account in a Minneapolis bank and such rent as he received from his homestead was deposited in his bank. The board finds that the taxpayer at no time intended to change his legal domicile from Minneapolis, Minnesota to Provo, Utah, and that he was domiciled in Minnesota from Jan. 1, 1944 to April 12, 1944, and taxable during that period. Lindberg v Commissioner, MBTA, March 30, 1950, 339.

The sole question in this case was whether or not Addison Miller was a resident of and domiciled in Minnesota for income tax purposes during the periods involved. The order of the commissioner assessing an additional tax and interest for the period in question must be reversed because clearly Mr. Miller had established his domicile in Florida and was a resident in Florida at the time covered by the tax demanded. Mr. Miller may have moved to Florida for the purpose of avoiding the payment of the Minnesota tax but the facts indicated a bona fide change of his domicile from Minnesota to Florida and his motive for making the change is immaterial. Estate of Addison Miller v Commissioner of Taxation, MBTA, May 7, 1952, 323.

Appellant owned a 24½ percent interest in a partnership business known as the Thomes Dried Egg Company. This partnership was composed of the taxpayer and seven other individuals. In January, 1944, taxpayer executed a deed of gift, assigning one-half of his partnership interest to his son, A. B. Thomes, serving in the United States navy. The partnership business was dissolved two months after the purported deed of gift and upon liquidation 12½ percent of the profits were distributed to A. B. Thomes who had no knowledge of the gift until after the partnership was dissolved and the assets liquidated. The commissioner found that there never had existed a bona fide partnership involving the son, A. B. Thomes, and returned the amount of the gift to the taxable income of the father, Charles B. Thomes, and assessed an additional tax. The act of the commissioner is affirmed. Chas. B. Thomes v Commissioner of Taxation, MBTA, May 9, 1953, 439.

In 1944 the taxpayer paid federal income and war excess profit taxes of $113,931.18 on income earned during 1943. The taxpayer's gross income for the year 1944 was $76,679.51. In reporting his Minnesota income tax for 1944 he took a deduction of the amount paid by him to the federal government. This deduction exceeded by $37,251.67 the entire gross income for the year 1944. In January, 1946, the taxpayer received from the federal government a refund of $10,024.38 of the $113,931.18 paid in 1944. The commissioner by the order herein appealed from returned this $10,024.38 to the taxpayer's 1946 income and assessed an additional tax thereon. This was error. Section 290.01, subdivision 20 defines gross income to include "amounts received as refunds on account of taxes deducted from gross income during any taxable year" and provides that such refunds "shall be treated as income for the year in which actually received." The amount in question was clearly a "refund on account of taxes." The amount of the refund can only be deducted from $37,251.67, the excess of the 1943 federal tax over the total income in 1944. The $10,024.38 was not income but merely a reduction in the amount of the over credit in 1944. The commissioner's order is reversed. Klinkerfues Bros. v Commissioner of Taxation, MBTA, May 7, 1953, 440.

A farmer who was engaged in production and sale of dairy products and in production and sale of hogs, and who maintained his dairy herd at regular size by selling cows which farmer had held for more than six months and which were no longer profitable or fit for use in herd and by replacing such cows with young stock, and who in accordance with normal practice in hog raising industry annually sold his whole breeding herd which farmer had held for more than six months and acquired new breeding herd could treat profits realized from such sales as "capital gains" for

purpose of computation of net income for tax purposes, on theory that animals sold were not held by farmer primarily for sale to customers in ordinary course of trade or business. Albright v United States, 173 F(2d) 339.

The finding of the federal district court in a breach of contract action that plaintiff, who had lived in foreign countries and wherever his business took him for several years preceding the bringing of the action, was a citizen of Oklahoma and had not lost his citizenship, so that diversity of citizenship existed between plaintiff and defendant Minnesota corporation, was not clearly erroneous under the evidence and was required to be affirmed on appeal. Maple Island Farm v Bitterling, 196 F(2d) 55.

290.02 IMPOSITION OF PRIVILEGE TAX ON CORPORATIONS; MEASUREMENT

Income tax. 33 MLR 52.

The franchise tax imposed by Laws 1933, Chapter 405, Section 2 is an ad valorem tax. The taxing of the franchise of sleeping car companies as property under the Gross Receipts Tax Act of 1913, chapter 480, section 2 precludes the imposition of a franchise tax on such sleeping car franchise under Laws 1933, Chapter 405, Section 2. The imposition of a franchise tax on sleeping car company, which is subject to gross receipts tax, is violative of the rule against double taxation and is in contravention of the uniformity clause of Minnesota Constitution, Article IX, Section 1. Pullman v Commissioner, 223 M 96, 25 NW(2d) 838.

The question whether a foreign corporation is "doing business" within another state where it is not qualified is primarily one of fact, dependent not upon any single act but rather upon the effect of all its actions within the state involved. Mere ownership by a foreign corporation of stock in a domestic corporation within a state, and even of a controlling interest therein, does not in itself necessarily constitute "doing business" within the state concerned. Where a foreign corporation is organized for the purpose of holding the controlling stock in a local corporation and of directing its management through the voting power of the stock so held, or where in addition thereto there exist circumstances which render the local corporation merely the agent of the holding corporation, and the latter is present and acting in the state through its officers, such foreign corporation may be held to be "doing business" within the state and to have acquired a commercial domicile there based upon the described activity, rendering it subject to local taxation. Minn. Tribune Co. v Commissioner of Taxation, 228 M 452, 37 NW(2d) 737.

Where Delaware corporation not qualified in Minnesota was organized for the purpose of controlling election of officers and directors of a local corporation and excluding other substantial stockholders from attaining such control, and after its organization elected officers and a majority of directors of local corporation, who were likewise its own officers and directors, and maintained its office, books, and records and conducted all of its activities here, to the exclusion of other states, held that such activities were sufficient to sustain finding of commissioner and board of tax appeals that such foreign corporation had acquired a commercial domicile within the state. Facts here distinguish case from Marshall-Wells Co. v Commissioner of Taxation, 220 M 458, 20 NW(2d) 92, where it was conceded that a foreign corporation had acquired a commercial domicile, but where stocks of other corporations held by it had no business situs in Minnesota and did not form an integral part of such foreign corporation's Minnesota business. Minn. Tribune v Commissioner of Taxation, 228 M 452, 37 NW(2d) 737.

A telegraph company which paid gross earnings taxes for calendar years 1941, 1942, and 1943, was not liable for the franchise tax imposed by section 290.02, since the franchise tax imposed was an ad valorem property tax. Western Union v Spaeth, 232 M 128, 44 NW(2d) 440.

The Mutual Holding Company, a Delaware corporation, was formed by a group of stockholders of the Minnesota Tribune Company, a corporation which owned and published the Minneapolis Tribune, for the primary purpose of acquiring, holding, and voting a majority of the stock of the Tribune Company; and from 1924 until its dissolution in 1943 the holding company performed all its corporate functions in

Minnesota, including the holding of stockholders' and board of directors' meetings at which among other things certain members of its board of directors were authorized to vote its stock in the Minnesota Tribune Company. The Minnesota Tribune Company is successor by merger to the Mutual Holding Company. The income from the Minnesota Tribune Company's stock during 1941 is assignable to Minnesota and taxable here because of the commercial domicile of the Mutual Holding Company and because the Minnesota Tribune Company stocks form an integral part of and were related to the business which the taxpayer conducted in Minnesota. Minnesota Tribune Co. v Commissioner, MBTA, Sept. 20, 1948, 264.

290.03 CLASSES OF TAXPAYERS

Liability of assignor for tax on income from assigned contracts. 33 MLR 88.

Tax-free liquidations; taxation of subsequent distribution. 33 MLR 93.

Taxpayer residing with his wife and family at Wegdahl, Minnesota, deducted $4,713.50 as wages obtained in Alaska during the year 1943. During the time petitioner was in Alaska he lived in tents, as did other like employees while his wife and family continued to live in Wegdahl where his wages under the federal act were paid to her. It is held that the taxpayer was domiciled in Minnesota during all of the time he was employed in Alaska, and the commission properly returned the entire amount claimed deduction to the income of the taxpayer and assessed an additional tax thereon. To acquire a new domicile of choice there must be a residence in new locality together with the intention there to remain. The facts in the instant case show no intention to permanently remain in Alaska, and clearly show his intention to return to Wegdahl at the end of the term of his employment. The holding of the commissioner is affirmed. Connor v Commissioner, MBTA, July 8, 1948, 315.

Appellant filed his income tax returns for the years 1943, 1944, and 1945. His returns for each year disclosed his partnership income and a tax was not paid thereon. His returns, however, failed to show any income by reason of his salary as an agent of the FBI, with which he was associated during all three years. The taxpayer claimed that he was not a resident of Minnesota during the said three years. It is held that during the year 1943, and all of 1944 to Dec. 1, the taxpayer was domiciled in a state other than Minnesota and he should not be taxed for income during that period. It is found that he returned to Minnesota and was domiciled in Minnesota during the month of December, 1944 and all of 1945 and his salary during such period is taxable as Minnesota income in its entirety. Keegan v Commissioner of Taxation, MBTA, Feb. 16, 1951, 367.

The taxpayer and his family resided in Minneapolis. He lost his position by reason of a liquidation of the company he was working for and after some delay in December, 1942, accepted a similar position in Utah and continued working on a salary until May, 1943. While in Utah the taxpayer and his family lived in rented quarters. During the ten months he was in Utah they made no effort to dispose of their homestead in Minneapolis and the family furniture was stored. The taxpayer neither registered nor voted in Utah and during all the time retained a checking account in a Minneapolis bank and such rent as he received from his homestead was deposited in his bank. The board finds that the taxpayer at no time intended to change his legal domicile from Minneapolis, Minnesota to Provo, Utah, and that he was domiciled in Minnesota from Jan. 1, 1944 to April 12, 1944, and taxable during that period. Lindberg v Commissioner, MBTA, March 30, 1950, 339.

Residence and domicile are not always identical terms. Residence may simply require bodily presence in a place, while domicile requires bodily presence in the place coupled with an intention to make it one's home. The domicile of origin is the domicile assigned to every child at its birth. Every person at all times has one domicile and no person has more than one domicile at a time. A domicile once established continues until it is superseded by a new domicile. In the instant case, the taxpayer was born in Minnesota on Aug. 12, 1920, resided with his parents on a farm near Osakis until 1938, and during 1939 and 1940 was employed in Hampton, Iowa and Hollywood, California, returning to his home to have an operation performed January, 1941. After recuperating he was employed for a time at Pontiac, Michigan, returning later to Osakis. In August, 1943, he joined the merchant marines in Minne-

apolis, listing his home as Osakis, Minnesota. He remained in the government service until his return to Minnesota where he was repatriated and hospitalized in the United States from April 8, 1948, to June 2, 1948. The taxpayer voted for the first time in 1948 in Minnesota. He was married in January, 1949, and he and his wife have continued to live in Minnesota. The question arises as to whether or not he was at any time domiciled in the Philippine Islands and exempt from the payment of income tax because of that fact. The commissioner properly assessed the taxpayer on income tax for the years 1944, 1945, 1946, and 1947, and held that during all those years the taxpayer was domiciled in Minnesota. Darwin W. Schultz v Commissioner of Taxation, MBTA, June 26, 1951, 371.

Persons residing in the area embraced in the Fort Snelling reservation are subject to state income taxes. OAG Oct. 4, 1949 (531-K).

290.05 EXEMPTIONS FROM TAX

HISTORY. 1933 c 405 s 5; Mason's Supp s 2394-5; Ex1937 c 49 s 5; 1939 c 446 s 1, 2; 1941 c 109 s 1; 1941 c 550 s 2; 1943 c 643 s 1; 1943 c 656 s 27; 1947 c 635 s 3; 1953 c 647 s 1.

Exemption of a bona fide resident of a foreign country from a federal income tax. 32 MLR 842.

Patronage refund. 35 MLR 549.

The court could judicially notice standard life and annuity tables in determining whether payments under endowment contract were "annuities" subject to income tax; and the taxpayer has the burden of proving that payments received under endowment contracts were not annuities and hence not subject to income tax. Hess v United States, 74 F. Supp. 135.

Federal income taxes paid by a corporation for and on behalf of the income tax liability of a predecessor corporation is not a tax deductible under the provisions of section 290.09. Re Moore Business Forms, MBTA, Nov. 17, 1952, 378.

290.06 RATES OF TAX

HISTORY. 1933 c 405 s 6; Ex1937 c 49 s 6; 1939 c 446 s 3; M Supp s 2394-6; 1941 c 550 s 3; 1943 c 656 s 2; 1945 c 604 s 3; 1947 c 635 s 4; 1949 c 642 s 13; 1949 c 734 s 4, 5; 1951 c 605 s 1, 2; 1951 c 676 s 1; 1953 c 667 s 1, 2.

While the Minnesota income tax act of 1933, as amended, follows quite closely the federal law, there are differences. Notable differences discussed. 38 MLR 6.

The surtax upon a corporation imposed by M.S. 1949, Section 290.06, Subdivision 4, is not a tax due under the computation provided for in subdivision 1. It is an additional tax arrived at from adding a percentage of the rate set forth in subdivision 1. Since the credits permitted by subdivision 3 of section 290.06 are expressly limited to the tax due under the computation provided for in subdivision 1 the surtax upon corporations imposed by subdivision 4 is not subject to reduction by the credits provided for in subdivision 3 of section 290.06. OAG June 1, 1953 (531).

290.061 VETERANS ADJUSTMENT, CORPORATION TAXES

HISTORY. 1949 c 642 s 14; 1951 c 605 s 3.

NOTE: The surtax due under section 290.06, subdivision 5, is not a tax due under the computations set forth in subdivision 2. It is an additional tax arrived at by using a percentage of the rates set forth in subdivision 2. Since the credits permitted by subdivision 3 are expressly limited to the taxes due under the computations provided for in subdivision 2, it follows that the surtax imposed by subdivision 5 is not subject to reduction by the credits provided for in subdivision 3. Under any other ruling it would be possible to nullify the provisions of subdivision 5 that the surtax shall not be reduced below 5 percent of the respective rates as they are now fixed by subdivision 2 by merely increasing the credits in subdivision 3. Subdivision 1 provides that the privilege and income taxes imposed by chapter 290 upon corpora-

tions shall be computed by applying to their taxable net income in excess of the applicable credits against net income allowed under section 290.21 the rate of 6 percent. The surtax due under section 290.06, subdivision 4, is not a tax due under the computation provided for in subdivision 1. It is an additional tax arrived at by using a percentage of the rate set forth in subdivision 1. Since the credit permitted by subdivision 3 is expressly limited to taxes due under the computation provided for in subdivision 1 it follows that the surtax imposed by subdivision 4 is not subject to reduction by the credit provided for in subdivision 3. Section 290.361, subdivision 1, 2, provide that the tax imposed on national and state banks by chapter 290 shall be governed by the provisions of section 290.02 and shall be computed in the manner provided by chapter 290 except that the rate shall be 8 percent instead of 6 percent. Section 290.02 imposes a privilege tax upon corporations. The privilege and income taxes imposed by chapter 290 upon corporations are computed according to the provisions of section 290.06, subdivision 1. The surtax due under section 290.361, subdivision 6, is not a tax due under the computation provided for in section 290.06, subdivision 1. Since the credit permitted by section 290.06, subdivision 3, is expressly limited to taxes due under the computation provided for in subdivision 1 it follows that the surtax imposed by section 290.361, subdivision 6, is not subject to reduction by the credit provided for in section 290.06, subdivision 3. Section 290.061, subdivision 2, imposes a new and additional tax upon the taxable net income for each taxable year of all persons other than corporations. Section 290.01, subdivision 22, defines "taxable net income" as the net income assignable to this state and provides that it shall be determined as provided in sections 290.17 to 290.20. Section 290.18 provides that the taxable net income shall be computed by deducting from the gross income assignable to this state deductions of the kind permitted by section 290.09. The new annual tax is a flat sum of $5 and is not dependent upon any deductions, credits, or rates of taxation such as apply in the computation of taxes upon taxable net income under other provisions. It follows that the $5 annual tax is imposed without regard to tax liability for taxable net income under other provisions of law. If a person other than a corporation has net income assignable to this state he is liable for the $5 whether or not he has taxable net income subject to tax under other provisions of law.

Lindstrom and Carlson operated a business at a loss during a portion of 1942. A partnership was formed commencing Jan. 1, 1943, consisting of Carlson and his wife, Inez, and Lindstrom and his wife, Marion. The business during 1943 yielded a net profit for 1943 of $26,000. The commissioner of taxation determined the partnership was not valid for purposes of determining Minnesota income tax liability. He added the 1943 Inez Carlson partnership income of $6,453.18 to that of her husband, Fred C. Carlson, and assessed a tax thereon. This was an error. Activities of Carlson and Lindstrom in behalf of the business were substantially the same in 1942 and 1943. On the other hand, the activities of Inez Carlson were extensive and valuable to the business in 1943 after she became a partner and the services performed by her resulted in the addition of at least 20 new toys and games to a line of business conducted by the partnership. Her activities constituted vital service to the partnership and the income of Inez Carlson was her individual income and should have been taxed as such and should not have been added to that of Fred C. Carlson. Fred C. Carlson v Commissioner, MBTA, May 18, 1948, 303.

The microfilming of income tax returns preparatory to destruction whereby the employee of the microfilm company could redevelop the microfilm of taxpayer's income tax in the process of checking film for defects would constitute a violation of section 290.61. OAG Aug. 14, 1951 (531-G).

290.07 COMPUTATION OF NET INCOME

Taxation of trust income chargeable to beneficiary. 21 MLR 297.

Sale of assets; basis of property acquired by devise subject to unassumed mortgage. 32 MLR 90.

Federal income tax; family transactions; liability of assignor for tax on income from assigned contracts. 33 MLR 88.

Federal income tax; tax-free liquidations; taxation of subsequent distributions. 33 MLR 93.

Gain from sale of livestock as a capital gain within the federal income tax, 117 (j). 33 MLR 791.

Divorce and federal income taxes. 37 MLR 413.

Where the taxpayer made wagers on card games, a football game and horse races, and the wagering gains exceeded wagering losses, the wagering losses were deductible from the wagering gains in computing taxable income although taxpayer offered no proof that the wagers were transactions entered into for profit. Humphrey v Commissioner, 162 F(2d) 853.

A public warehouse company, making income tax return on an accrual basis and collecting from customers a charge for handling into and out of warehouse at time goods were deposited therein, could not deduct from gross income as an item of expense the estimated cost of removing the goods from the warehouse in some future years at the end of the storage period, since, although the obligation to pay the cost of removals became fixed during the taxable year, the amount of such cost did not become definite and fixed until the goods were actually removed from the warehouse. Capital Warehouse Co. v Commissioner of Internal Revenue, 171 F(2d) 395.

Farmer's profits from sale of livestock as "capital gains" in "ordinary income". Allbright v United States, 173 F(2d) 339.

290.072 CERTAIN ALIMONY PAYMENTS TO BE REPORTED FOR TAXATION

HISTORY. 1943 c 656 s 4; 1949 c 734 s 5.

Alimony payments as income of the wife as it relates to income taxation. 34 MLR 280.

Lindstrom and Carlson operated a business at a loss during a portion of 1942. A partnership was formed commencing Jan. 1, 1943, consisting of Carlson and his wife, Inez, and Lindstrom and his wife, Marion. The business during 1943 yielded a net profit for 1943 of $26,000. The commissioner of taxation determined the partnership was not valid for purposes of determining Minnesota income tax liability. He added the 1943 Inez Carlson partnership income of $6,453.18 to that of her husband, Fred C. Carlson, and assessed a tax thereon. This was an error. Activities of Carlson and Lindstrom in behalf of the business were substantially the same in 1942 and 1943. On the other hand, the activities of Inez Carlson were extensive and valuable to the business in 1943 after she had became a partner and the services performed by her resulted in the addition of at least 20 new toys and games to a line of business conducted by the partnership. Her activities constituted vital service to the partnership and the income of Inez Carlson was her individual income and should have been taxed as such and should not have been added to that of Fred C. Carlson. Fred C. Carlson v Commissioner, MBTA May 18, 1948, 303.

Where under the terms of a divorce decree $1800 per year was paid to the wife as alimony and support money for two children in claiming income tax deduction, $900 of the amount paid during the year 1943 was a payment of alimony and as such was a proper deduction; but the $900 paid for the support of the children was not a proper deduction but did permit him to take the dependency deduction allowed for each child as he was the chief support of said children. Johnson v Commissioner, MBTA, May 20, 1948, 313.

290.074 Repealed, 1947 c 635 s 21.

290.075 RENEGOTIATED WAR CONTRACTS, ADJUSTED

HISTORY. 1943 c 656 s 26; 1945 c 604 s 6; 1951 c 578 s 1.

290.078 RESTRICTED STOCK OPTIONS

HISTORY. 1951 c 577 s 1, 2.

290.08 EXEMPTIONS FROM GROSS INCOME

HISTORY. 1933 c 405 s 12; Ex1937 c 49 s 7; 1939 c 446 s 5, 6; 1941 c 18 s 4; 1941 c 550 s 5, 6; 1943 c 656 s 5, 21; 1945 c 449 s 1; 1945 c 604 s 8; 1947 c 635 s 6; 1949 c 734 s 6; 1951 c 608 s 1.

Farmers' cooperatives and the federal income tax. 32 MLR 785.

Exemption of a bona fide resident of a foreign country from a federal income tax. 32 MLR 842.

An employee, whose employment as a manager of the fruit and vegetable department of a wholesale grocery business required to travel to cities other than the city in which the employer's place of business was located, is not required to stay overnight to come within the provisions of the internal revenue code defining taxpayers' adjusted gross income as being gross income minus expenses of travel and lodging while away from home or paid or incurred by the taxpayer in connection with performance by him for services as an employee. Scott v Kelm, 110 F Supp 819.

290.09 DEDUCTIONS FROM GROSS INCOME

HISTORY. 1933 c 405 s 13; Ex1937 c 49 s 8, 9; 1941 c 550 s 7; 1943 c 656 s 6, 7, 8, 24, 25; 1945 c 604 s 7; 1949 c 734 s 7; 1951 c 421 s 1; 1951 c 679 s 1; 1953 c 667 s 3.

Income tax; deductibility of amortizable bond premium. 35 MLR 224.

Embezzled funds as a deductible loss for income tax purposes and whether claimed deduction must be taken in the taxable year in which the loss occurred or whether it may be taken in the year of discovery. 36 MLR 171.

While the Minnesota Income Tax Act of 1933, as amended, follows closely the federal law there are differences. Notable differences discussed. 38 MLR 8.

The normal selection of sale of livestock which, due to injury, age, disease, or other reason are no longer desired by the livestock raiser for breeding purposes, and the normal selection for sale of animals for purposes of maintaining herd at regular size, are not sales of capital assets "used in trade or business," permitting the taxpayer to include only one-half gain from such sales in computing taxable net income. Albright v United States, 76 F. Supp. 532.

Where the owner and operator of a farm sold his farm and equipment at a loss, such loss was not an "operating loss" chargeable back against income taxes paid by him in prior years. Lazier v United States, 77 F. Supp. 241.

"Economic interest" does not necessarily mean title to ore in place but, as in the case at bar, applies to the possibility of profit from mining and shipping of the ore. Mere shareholding of capital stock of a mining corporation does not constitute "economic interest" entitling the holder to an allowance for depletion as a deduction from gross income, but the holder of a royalty interest has such an "economic interest" in the product of the mine in place which is depleted by severance so as to be entitled to depletion deduction. Van Slyke v Kelm, 107 F. Supp. 229.

The words "while away from home" do not mean away from home over night. An employee whose employment required traveling to various cities was not required to stay over night in order that his traveling expenses might be deducted in the determination of his adjusted gross income. Scott v Kelm, 110 F. Supp. 819.

The commissioner properly disallowed a $20 item paid to a church outside the state of Minnesota, a $10 item covering dues paid to Masonic lodges, and an item of $101 which the taxpayers deducted as traveling expenses incurred in making trips to Rochester where they sought medical attention. Marckel v Commissioner, MBTA, Oct. 29, 1947, 309.

Where, pending divorce proceedings, the husband and wife lived apart and the husband, under order of the court, contributed for the year under consideration $760 in cash, the home in which the wife and two minor children lived, and other incidentals for the support and maintenance of the two minor children, he had a right to claim that his contributions furnished the chief support of the two minor chil-

dren, notwithstanding the fact that the mother during the year earned approximately $2,700 and the taxpayer's claim for dependency support credit is valid. Pott v Commissioner of Taxation, MBTA, Dec. 19, 1950, 370.

290.095 NET OPERATING LOSS

Deductibility of OPA overcharges as business expenses in computing the federal income tax. 34 MLR 373.

290.10 NON-DEDUCTIBLE ITEMS

HISTORY. Amended, 1949 c 541 s 2.

Is gain on sale of corporation treasury stock to employees a gross income for federal tax purposes? 34 MLR 160.

If embezzled funds are a deductible loss for income tax purposes shall the claim be made the year the loss occurred or the year within which it was discovered? 36 MLR 171.

Stock dividends as income for tax purposes. 36 MLR 174.

In an action to recover overpayment of income tax, the evidence determining that certain payments received by plaintiff from an insurance company constituted a taxable annuity rather than tax-free insurance. Hess v U.S. 74 F. Supp. 135.

The commissioner of taxation is required to adopt a rule for the purpose of implementing the provisions of Laws 1947, Chapter 635, Section 7 (9). OAG Aug. 23, 1948 (531-L).

290.12 GAIN AND LOSS ON SALES

Income tax, gain on sale of treasury stock to employees. 34 MLR 160.

290.13 TRANSACTION IN WHICH GAIN OR LOSS IS NOT RECOGNIZED

HISTORY. Amended, 1951 c 267 s 1; 1953 c 141 s 2.

While the Minnesota Income Tax Act of 1933, as amended, follows quite closely the federal law, there are differences. Notable differences discussed. 38 MLR 11.

290.14 BASIS FOR DETERMINING GAIN OR LOSS

Holding period for the purpose of computing federal income tax on capital gain resulting from the sale of a partnership interest. 32 MLR 650.

Liability of assignor for tax on income from assigned contracts. 33 MLR 88.

Tax-free liquidations; taxation of subsequent distribution. 33 MLR 93.

Nature of gain from sale of land having a growing unmatured crop. 35 MLR 615.

290.16 ADJUSTMENT OF BASIS; LIMITATION OF CAPITAL LOSSES

HISTORY. 1933 c 405 s 20; Ex1937 c 49 s 15; Mason's Supp s 2394-20; 1941 c 550 s 10; 1943 c 656 s 10; 1945 c 596 s 1; 1947 c 635 s 8; 1949 c 332 s 1, 2; 1951 c 679 s 2; 1953 c 141 s 3; 1953 c 653 s 1.

Sale of assets; basis of property acquired by devise subject to unassumed mortgage. 32 MLR 90.

Where in a sale of land including growing unmatured crop the crop gain is treated as a capital gain, or the profit attributable to the growing crop is ordinary income for federal tax purposes, depends upon the applicable state law. 35 MLR 615.

Is the amount paid by stockholders after liquidation in satisfaction of the corporation's tax deficiency for years prior to the liquidation an ordinary loss or a long term capital loss? 35 MLR 680.

Current assets financing as a source of long term capital. 36 MLR 506.

Property right in an idea. 37 MLR 493.

Payment of income taxes under Securities Exchange Act. 37 MLR 495.

In ascertaining legislative intent, administrative interpretations of a statute may be considered, but where such interpretations are of comparatively short duration their weight is correspondingly diminished; nevertheless, they are entitled to some consideration, especially where intervening sessions of the legislature have given interested parties, who may have deemed themselves prejudiced by such interpretation, an opportunity to urge corrective amendments to change the course of such interpretation. Gale v Commissioner of Taxation, 228 M 345, 37 NW(2d) 711.

290.17 GROSS INCOME TO BE ALLOCATED

HISTORY. Amended, 1949 c 734 s 8.

Where Delaware corporation not qualified in Minnesota was organized for the purpose of controlling election of officers and directors of a local corporation and excluding other substantial stockholders from attending such control, and after its organization elected officers and a majority of directors of local corporation, who were likewise its own officers and directors, and maintained its office, books, and records and conducted all of its activities here, to the exclusion of other states, held that such activities were sufficient to sustain finding of commissioner and board of tax appeals that such foreign corporation had acquired a commercial domicile within the state. Facts here distinguish case from Marshall-Wells Co. v Commissioner of Taxation, 220 M 458, 20 NW(2d) 92, where it was conceded that a foreign corporation had acquired a commercial domicile, but where stocks of other corporations held by it had no business situs in Minnesota and did not form an integral part of such foreign corporation's Minnesota business. Minnesota Tribune v Commissioner of Taxation, 228 M 452, 37 NW(2d) 737.

The question whether a foreign corporation is "doing business" within another state where it is not qualified is primarily one of fact, dependent not upon any single act but rather upon the effect of all its actions within the state involved. Mere ownership by a foreign corporation of stock in a domestic corporation within a state, and even of a controlling interest therein, does not in itself necessarily constitute "doing business" within the state concerned. Where a foreign corporation is organized for the purpose of holding the controlling stock in a local corporation and of directing its management through the voting power of the stock so held, or where in addition thereto there exist circumstances which render the local corporation merely the agent of the holding corporation, and the latter is present and acting in the state through its officers, such foreign corporation may be held to be "doing business" within the state and to have acquired a commercial domicile there based upon the described activity, rendering it subject to local taxation. Minnesota Tribune Co. v Commissioner of Taxation, 228 M 452, 37 NW(2d) 737.

The entire income of a Minnesota resident received as compensation for labor, personal services, or derived from a business consisting principally of the performance of personal or professional services is assignable to the state without regard to where the labor or services were performed, but where as in the instant case a Minnesota resident derived income from a non-personal service enterprise conducted wholly in Canada, such income is not assignable. A Minnesota contractor who built a portion of the highway in Canada under a cost-plus contract did not receive compensation for labor or personal services or income derived from a business consisting principally of personal or professional services under section 290.217 (1). Bolier v Commissioner of Taxation, 233 M 72, 45 NW(2d) 802.

The taxpayers, husband and wife, filed a joint income tax return for the year 1943. The earnings of the wife, employed in Minnesota, was $1,861.44, while the earnings of the husband, earned in Canada, amounted to $2,765.96. The taxpayer claims that the Canadian earnings are not taxable. The commissioner properly determined that the entire income of the husband, being a Minnesota resident and being for personal services, was properly includable in the taxpayer's gross income, and returned

said amount to taxable income and assessed a tax thereon. Ihnet v Commissioner, MBTA, Oct. 30, 1947, 310.

Where the taxpayer, residing in Texas, on his Minnesota bulk stations met a net loss during 1938 of $13,615, and when during the same year he made a profit on his so-called brokerage business of $48,346.05, and where the evidence indicates that the total amount of oil handled by the brokerage office and by the bulk stations were practically co-incidental, and where the bulk stations bought practically all of their product through the brokerage firm, and where the brokerage operations outside of those with the said bulk stations were almost nil, it is held that the two operations during the year 1938 constituted a unitary business of buying gasoline at wholesale and selling the same, and the taxpayer should be taxed on the total net profits of the unitary business amounting to $34,730.20, and as the unitary business served stations in Minnesota, Iowa, and South Dakota, the tax should be apportioned between those states in accordance with the provisions of section 290.19. Webb v Commissioner, MBTA, Aug. 1, 1947, 140.

Taxpayer residing with his wife and family at Wegdahl, Minnesota, deducted $4,713.50 as wages obtained in Alaska during the year 1943. During the time petitioner was in Alaska he lived in tents, as did other like employees while his wife and family continued to live in Wegdahl where his wages under the Federal Act were paid to her. It is held that the taxpayer was domiciled in Minnesota during all of the time he was employed in Alaska, and the commission properly returned the entire amount claimed deduction to the income of the taxpayer and assessed an additional tax thereon. To acquire a new domicile of choice there must be a residence in new locality together with the intention there to remain. The facts in the instant case show no intention to permanently remain in Wegdahl at the end of the term of his employment. The holding of the commissioner is affirmed. Connor v Commissioner, MBTA, July 8, 1948, 315.

The Mutual Holding Company, a Delaware corporation, was formed by a group of stockholders of the Minnesota Tribune Company, a corporation which owned and published the Minneapolis Tribune, for the primary purpose of acquiring, holding, and voting a majority of the stock of the Tribune Company; and from 1924 until its dissolution in 1943 the holding company performed all its corporate functions in Minnesota, including the holding of stockholders' and board of directors' meetings at which among other things certain members of its board of directors were authorized to vote its stock in the Minnesota Tribune Company. The Minnesota Tribune Company is successor by merger to the Mutual Holding Company. The income from the Minnesota Tribune Company's stock during 1941 is assignable to Minnesota and taxable here because of the commercial domicile of the Mutual Holding Company and because the Minnesota Tribune Company stocks form an integral part of and were related to the business which the taxpayer conducted in Minnesota. Minnesota Tribune Co. v Commissioner, MBTA, Sept. 20, 1948, 264.

The taxpayer entered into a contract with the federal government for construction of a portion of the Alcan Highway in Canada. He furnished the nucleus of a construction outfit and oversaw and completed the contract. He received $31,500 for his services. The federal government guaranteed the taxpayer from loss, paid him his state compensation, and paid all expenses. The commissioner held that because of the lack of risk involved, the income received by the taxpayer was compensation for personal services and as such is assignable to Minnesota. The board reversed the decision of the commissioner and held that the operation is under the provisions of section 290.17 (3) since it is conceded that the entire income of the taxpayer resulted from operation in Canada and consequently none of this income is assignable to Minnesota. Bolier v Commissioner, MBTA, Feb. 28, 1950, 331.

Taxpayer was one of five persons interested in a partnership known as the Regan General Agency. Of the five, Regan and his wife resided in South Dakota. The other three partners did not. Regan, whose interest was nominal, was the managing partner. None of the others had any hand in the management. The income for the taxpayer omitted from her 1943 return was from a business consisting principally of the performance of personal or professional services, and the income of the taxpayer therefrom is properly returned to her net income. McCormick v Commissioner, MBTA, Sept. 13, 1950, 336.

Where the taxpayer resided in Moorehead, Minnesota, and during the taxable year of 1943 maintained an office in Fargo, North Dakota, where he conducted a general insurance agency. As general agent he held franchises which covered the sale of automobile, health, accident, life and other types of insurance in both states. When one of his agents sold a policy of insurance, the agent would collect the premium, deduct his commission, and remit the balance to the taxpayer who did then deduct his commission and forward the balance to the proper insurance company. Each policy became a contract between the purchaser of the policy and the specific insurance company. The commissioner correctly returned to the taxable income of the taxpayer the earnings the taxpayer received on policies written in North Dakota, the taxpayer being a Minnesota resident and the earnings constitutes income from personal services or from a business consisting of personal or professional services. Bjornson v Commissioner, MBTA, Sept. 18, 1950, 327.

The duties and services in the instant case are duties performed by architects and engineers. As such the income derived from their work is taxable to the appellant as a domestic corporation. It is income from a business consisting principally of the performance of personal or professional services. Toltz, King, and Day, Inc. v Commissioner of Taxation, MBTA, Oct. 29, 1953, 458.

290.18 COMPUTATION OF NET INCOME

HISTORY. Amended, 1949 c 734 s 9; 1951 c 609 s 1.

Income tax; capital gains; holding period involving sale of partnership interest. 32 MLR 650.

Nature of gain from sale of land having a growing unmatured crop. 35 MLR 615.

Stock dividend as income. 36 MLR 174.

When a judge of probate retires his retirement compensation is payable to him because of his having held the office of judge of the probate court, and no compensation is allowable to him because of his having held the office of judge of the juvenile court. OAG April 12, 1948 (347-I).

290.19 NET INCOME, ALLOCATION

HISTORY. Amended, 1953 c 668 s 1.

In determining the taxable income assignable to Minnesota of a nonmanufacturing business carried on partly within and partly without state, the method prescribed by section 290.19, subdivision 1 (2) (a) must be used, unless that method does not properly reflect taxable income assignable to Minnesota. Stronge v Commissioner of Taxation, 228 M 182, 36 NW(2d) 800.

Where the taxpayer, residing in Texas, on his Minnesota bulk stations met a net loss during 1938 of $13,615 and when during the same year he made a profit on his so-called brokerage business of $48,346.05, and where the evidence indicates that the total amount of oil handled by the brokerage office and by the bulk stations were practically co-incidental, and where the bulk stations bought practically all of their product through the brokerage firm, and where the brokerage operations outside of those with the said bulk stations were almost nil, it is held that the two operations during the year 1938 constituted a unitary business of buying gasoline at wholesale and selling the same, and the taxpayer should be taxed on the total net profits of the unitary business amounting to $34,730.20, and as the unitary business served stations in Minnesota, Iowa, and South Dakota, the tax should be apportioned between those states in accordance with the provisions of section 290.19. Webb v Commissioner MBTA, Aug. 1, 1947, 140.

Taxpayer is a Delaware corporation, licensed to do business in Minnesota, maintaining its head office in St. Paul, and operating in 36 states. It employs in its St. Paul office 125 employees, exclusive of officers, and its general office expense for 1940 was $210,778.17. It conducts a unitary business partly within and partly without Minnesota, and its franchise tax liability is measured by section 290.19. The activities con-

ducted in and out of the main office of such a wide flung corporate enterprise are essential and income producing, and the establishment and execution of the over-all policy is an important phase of its successful business operation. It is in Minnesota that the excess of return over outgo finally culminates into ultimate profit. The order of the commissioner assessing an additional tax in the sum of $1,504.49 is affirmed. Allied Building Credits v Commissioner, MBTA, Oct. 29, 1947, 253, 254.

The main office of a corporation engaged in making installment loans, purchasing installment notes, making advances for particular uses, with branch offices in 36 states, produced income so that the gross receipts could be used as a whole in determining the tax for which the corporation was liable in Minnesota. Re Allied Building Credits, MBTA, Oct. 29, 1947, 253.

Where a Minnesota resident owning a Wisconsin stock farm received income from the sale of livestock in Minnesota classed as Minnesota sales, and not excluded under the provisions of section 4, then sections (2) (a) and (2) (b), of section 290.19, subdivision 1, control and provide the only methods by which income is allocable to Minnesota. The legislature provided no other statute governing allocation of such income and none exempting such income from allocation because the recipient thereof is a farmer. By use of the three factor formula allowable under Minnesota statutes, of the loss suffered through the Wisconsin farm operation in the instant case, totaling $32,408.58, the taxpayer may be allowed as allowable credit against his Minnesota profits from other enterprises the sum of $10,236.59. Chas. A. Ward v Commissioner, MBTA, April 12, 1948, 291.

The taxpayer is a non-manufacturing corporation whose home office is in St. Paul, engaged in selling merchandise in 48 stores located in Minnesota and nine other states, its taxable net income being derived from a business carried on partly within and partly without the state of Minnesota and it used the prescribed statutory single factor formula of sales to apportion taxable income to Minnesota. The commissioner contended that the sales formula did not properly reflect taxable income assignable to Minnesota because it failed to properly reflect home office activities and that this could only be reflected by the use of the three factor formula of property, payroll and sales of property, which is one of the two alternate methods prescribed by statute. The Minnesota legislature has seen fit to specifically provide for a single factor sales formula to apply to all but manufacturing business. The three factor formula of property, payroll and sales governs in assigning income to businesses engaged in manufacturing, and the legislature also provided the three factor formula as one of the alternate methods in (2) (b). The business of selling ladies' merchandise denotes nothing particularly distinctive that should set it apart from other non-manufacturing enterprises. The holding of the commissioner is reversed and the amount due from the taxpayer determined by a trial de novo and under the single factor formula. Stronge & Lightner v Commissioner, MBTA, May 18, 1948, 295.

The taxpayer is a Minnesota corporation having its main office in St. Paul and engaged in buying and selling at wholesale, plumbing, heating and creamery equipment and supplies. It operates four branches in Minnesota, one in North Dakota, two in South Dakota, and two in Montana. Each branch is in charge of a manager and operates independently, builds its own inventories and determines what and when to buy. Each branch has an operative fund which is replenished from time to time by the St. Paul office. Each branch purchases merchandise from or through the Crane & Company in Chicago. At the end of the year Crane & Company of Illinois makes a charge for service rendered by it, which charge is billed directly to the respective branches. At the end of the year certain administrative and executive expenses of the St. Paul office, consisting primarily of officers' salaries are pro-rated on the basis of sales among the various offices. The St. Paul branch, the taxpayer in the instant case, determined and paid its tax by the use of the separate accounting method, paying $16,076.29. The commissioner properly determined that the separate accounting method was not correct and by use of the so-called Three Factor Formula of Tangible Property and Sales, properly determined the tax liability of the taxpayer to be $17,771.99 and assessed a deficiency tax in the amount of $1,695.70. Crane & Co. of Minnesota v Commissioner of Taxation, MBTA, March 17, 1949, 320.

The taxpayer in his return claimed credit for the expense connected with the production of his gross income. The commissioner demanded proof and explanation

of the claimed allowance, which the taxpayer refused to furnish. Upon his failure to produce records, memoranda, or testimony to substantiate his claim, the commissioner allowed 50 percent of the amount claimed and returned the balance to taxable income for the taxpayer to pay. Upon appeal to the board of tax appeals, the order of the commissioner was sustained. Levin v Commissioner, MBTA, June 26, 1953, 468.

290.20 COMMISSIONER TO PRESCRIBE METHODS

Taxpayer is a Delaware corporation, licensed to do business in Minnesota, maintaining its head office in St. Paul, and operating in 36 states. It employs in its St. Paul office 125 employees, exclusive of officers, and its general office expense for 1940 was $210,778.17. It conducts a unitary business partly within and partly without Minnesota, and its franchise tax liability is measured by section 290.19. The activities conducted in and out of the main office of such a wide flung corporate enterprise are essential and income producing, and the establishment and execution of the over-all policy is an important phase of its successful business operation. It is in Minnesota that the excess of return over outgo finally culminates into ultimate profit. The order of the commissioner assessing an additional tax in the sum of $1,504.49 is affirmed. Allied Building Credits v Commissioner, MBTA, Oct. 29, 1947, 253, 254.

290.21 CREDITS AGAINST TAXABLE NET INCOME

HISTORY. Amended, 1949 c 734 s 10; 1951 c 679 s 3; 1953 c 321 s 1.

Embezzlement as a deductible loss; year-of-loss or year-of-discovery. 36 MLR 171.

Federal income tax; gift of property held for sale in the ordinary course of business as realization of income. 37 MLR 74.

While the Minnesota Income Tax Act of 1933, as amended, follows quite closely the federal law there are differences. Notable differences discussed. 38 MLR 10.

The commissioner of taxation properly disallowed a deduction for an item paid to a church outside of the State of Minnesota and items covering dues paid to certain masonic lodges. In Re Marckel, MBTA, Oct. 29, 1947, 309.

The commissioner properly disallowed a $20 item paid to a church outside the State of Minnesota, a $10 item covering dues paid to masonic lodges, and an item of $101 which the taxpayers deducted as traveling expenses incurred in making trips to Rochester where they sought medical attention. Marckel v Commissioner, MBTA, Oct. 29, 1947, 309.

Occupational taxes to be paid by taxpayer to Minneapolis under Laws 1947, Chapter 608, is deductible from the taxpayer's gross income in arriving at his state income tax, and is not deductible from his state income tax liability after computation of the tax. OAG May 16, 1947 (531-F).

290.22 TAXES ON ESTATES AND TRUSTS

Right of federal government to tax net income derived from trading carried on by grantor in behalf of trust created by him as a gift from grantor. 32 MLR 646.

290.23 ESTATES OR TRUSTS; COMPUTATION OF NET INCOME; CREDITS; DEDUCTIONS

HISTORY. 1933 c 405 s 28a; 1939 c 446 s 10; M Supp s 2394-28a; 1941 c 550 s 12; 1943 c 656 s 12; 1945 c 604 s 29.

290.24 ESTATES OR TRUSTS; PERSONAL CREDIT

HISTORY. 1933 c 405 s 28b; 1939 c 446 s 10; M Supp s 2394-28b; 1941 c 550 s 23.

290.25 RULE WHEN TAXABLE YEAR DIFFERS

HISTORY. 1933 c 405 s 28c; 1939 c 446 s 10; M Supp s 2394-28c.

290.26 COMPUTATION OF NET INCOME OF ESTATE OR TRUST

HISTORY. 1933 c 405 s 28d; 1939 c 446 s 10; M Supp s 2394-28d; 1945 c 604 s 18.

290.27 REVOCABLE TRUSTS

HISTORY. 1933 c 405 s 28e; 1939 c 446 s 10; M Supp s 2394-28e.

Howard E. Stevens, Sr. on Feb. 21, 1936, created trusts in favor of each of his two children. Each child was of full age, married, and without issue. Howard E. Stevens, Sr. was the sole trustee in each case. For the year 1941 each of the two trusts received an income in the sum of $4,140. In his return, Howard E. Stevens, Sr. separated the trust incomes from his own personal income, making separate returns. Although the trust instruments declare the trusts to be irrevocable, the donor or grantor in the instant case under the terms of each trust receives sufficient discretionary power under certain conditions to determine from among several persons who should in fact receive the corpus and the income from the trusts. The commissioner properly held that under the provisions of M.S.A., Section 290.01, Subdivision 20, the trusts were revocable in that the income is distributable to the grantor in his discretion and the income is therefore taxable to the grantor. The commissioner properly returned the sum of $8,280 to the grantor's taxable income. Howard E. and Mabel Stevens v Commissioner, MBTA, April 28, 1948, 250.

290.28 RESERVATION OF INCOME BY GRANTOR

HISTORY. 1933 c 405 s 28f; 1939 c 446 s 10; M Supp s 2394-28f; 1949 c 734 s 11.

Howard E. Stevens, Sr. on Feb. 21, 1936, created trusts in favor of each of his two children. Each child was of full age, married, and without issue. Howard E. Stevens, Sr. was the sole trustee in each case. For the year 1941 each of the two trusts received an income in the sum of $4,140. In his return, Howard E. Stevens, Sr. separated the trust incomes from his own personal income, making separate returns. Although the trust instruments declare the trusts to be irrevocable, the donor or grantor in the instant case under the terms of each trust receives sufficient discretionary power under certain conditions to determine from among several persons who should in fact receive the corpus and the income from the trusts. The commissioner properly held that under the provisions of M.S.A., Section 290.01, Subdivision 20, the trusts were revocable in that the income is distributable to the grantor in his discretion and the income is therefore taxable to the grantor. The commissioner properly returned the sum of $8,280 to the taxable income. Howard E. and Mabel Stevens v Commissioner, MBTA, April 28, 1948, 250.

290.281 COMMON TRUST FUND NOT TAXED

A new motor vehicle in possession of a dealer solely for the purposes of sale is exempt from the motor vehicle taxation. When an entruster, under a trust receipt, takes possession of a motor vehicle from a dealer, he holds the same with the same rights and duties of a pledgee. But when he sells the motor vehicle to a user, and the vehicle is used upon the street, the usual tax must be paid. OAG Dec. 8, 1953 (632-A-21).

290.30 FIDUCIARY TO PAY TAX

HISTORY. 1933 c 405 s 29a; 1939 c 446 s 12; M Supp s 2394-29a.

290.31 PARTNERSHIPS NOT TAXED

Bona fide intent to associate as criterion for valid partnership. 34 MLR 158.

There must be a partnership in reality and not a mere pretense of one to entitle the partners to divide the income tax burden according to their respective interests as they appear on the face of the articles of partnership; and where a father as sole owner conveyed undivided interests in realty occupied by business to each of six children, some of whom were minors, and upon appointment as guardian, transferred the property of minors to a partnership of himself and other children under agree-

ment limiting partnership of minors, preventing assignment of their interest and subjecting their share of the profits to the decision of others, the minors performing no service and contributing no capital and not active in the business, the partnership income of the minors was taxable to the father. State v Hitchcock, 228 M 335, 37 NW(2d) 378.

There must be a partnership in reality and not a mere preference of one to entitle the partners to divide the income tax burden according to their respective interests as they appear on the face of the articles of partnership. In the case at bar, the facts support the trial court's findings and conclusions that there was no partnership in reality insofar as defendant's four younger children were concerned. State v Hitchcock, 228 M 335, 37 NW(2d) 378.

This case deals with companion cases where partners apply for recovery of additional income taxes paid. It is their contention that they should have been taxed upon a long-term capital gain rather than upon a short-term capital gain. They obtained an option to buy land under the terms of a certain agreement and were authorized to make an assignment of the option. More than six months after entering into this agreement they exercised their option by transferring it to another and they designated their optionee as purchaser and directed that the warranty deed conveying the land be made to the optionee and delivered to him. The time between the partners exercise of the option and the conveyance was less than six months. The court held that the partners made a sale of the land rather than a sale of the option, so that they realized a short-term capital gain on the sale rather than a long-term capital gain, which would have been the holding if the sale had been of the option. Barber v United States, 115 F Supp 349.

290.33 TAXABLE YEAR EXTENDING INTO CALENDAR YEARS AFFECTED BY DIFFERENT LAWS

Decedent died on Nov. 14, 1944, and taxpayer was appointed executor in December, 1944. He made his first fiduciary return in January, 1946, covering the period from Nov. 14, the date of the death of decedent, to Oct. 31, 1945, the end of the annual accounting period for the estate. The return showed long-term capital gains of $76,652.76 on property all acquired on Nov. 14, 1944. The sales which resulted in the reported capital gains were made at various times commencing May 14, 1945 and ending Oct. 24, 1945. Prior to the enactment of Laws 1945, Chapter 596, taxpayer paid an income tax of a full 100 percent on all capital gains notwithstanding the 1945 amendment refers to "all taxable years." Section 290.23, dealing with calendar years, is applicable. One hundred percent of the capital gain was taxable in 1944 and only fifty percent of the long-term capital gain was taxable in 1945. Gale v Commissioner, MBTA, Sept. 28, 1945, 314.

The tax-computation formula established by M.S.A., Chapter 290.33, applies automatically whenever two distinct circumstances arise, (1) when a tax is imposed on a taxpayer for a period beginning in one calendar year and ending in the succeeding calendar year; and (2) when the law applicable to the first calendar year is different from the law applicable to the second calendar year. A statute should be so construed that, if it can be prevented, no clause, word, or sentence will be superfluous, void, or insignificant. Gale v Commissioner of Taxation, 228 M 345, 37 NW(2d) 711.

290.361 TAX ON INCOME OF NATIONAL BANKS

HISTORY. 1933 c 405 s 32-4; 1941 c 18 s 1; 1945 c 604 s 22; 1949 c 642 s 12; 1951 c 605 s 4.

NOTE: The surtax due under section 280.06, subdivision 5, is not a tax due under the computation set forth in subdivision 2. It is an additional tax arrived at by using a percentage of the rates set forth in subdivision 2. Since the credits permitted by subdivision 3 are expressly limited to the taxes due under the computations provided for in subdivision 2, it follows that the surtax imposed by subdivision 5 is not subject to reduction by the credits provided for in subdivision 3. Under any other ruling it would be possible to nullify the provisions of subdivision 5 that the surtax shall not be reduced below 5 percent of the respective rates as they are now fixed by subdivision 2 by merely increasing the credits in subdivision 3. Section 290.06, subdi-

vision 1, provides that the privilege and income taxes imposed by chapter 290 upon corporation shall be computed by applying to their taxable net income in excess of the applicable credits against net income allowed under section 290.21 the rate of 6 percent. The surtax due under section 290.06, subdivision 4, is not a tax due under the computation provided for in subdivision 1. It is an additional tax arrived at by using a percentage of the rate set forth in subdivision 1. Since the credit permitted by subdivision 3 is expressly limited to taxes due under the computation provided for in subdivision 1, it follows that the surtax imposed by subdivision 4 is not subject to reduction by the credit provided for in subdivision 3. Section 290.361, subdivisions 1 and 2, provide that the tax imposed on national and state banks by chapter 290 shall be governed by the provisions of section 290.02 and shall be computed in the manner provided by chapter 290 except that the rate shall be 8 percent instead of 6 percent. Section 290.02 imposes a privilege tax upon corporations. The privilege and income taxes imposed by chapter 290 upon corporations are computed according to the provisions of section 290.02, subdivision 1. The surtax due under section 290.361, subdivision 6, is not a tax due under the computation provided for in section 290.06, subdivision 1. Since the credit permitted by section 290.06, subdivision 3, is expressly limited to taxes due under the computation provided for in subdivision 1, it follows that the surtax imposed by section 290.361, subdivision 6, is not subject to reduction by the credit provided for in sections 290.06, subdivision 3. Section 290.061, subdivision 2, imposes a new and additional tax upon the taxable net income for each taxable year of all persons other than corporations. Section 290.01, subdivision 22, defines "taxable net income" as the net income assignable to this state and provides that it shall be determined as provided in sections 290.17 and 290.20. Section 290.18 provides that the taxable net income shall be computed by deducting from the gross income assignable to this state deductions of the kind permitted by section 290.09. The new annual tax is a flat sum of $5 and is not dependent upon any deductions, credits, or rates of taxation such as apply to the computation of the taxes upon taxable net income under other provisions. It follows that the $5 annual tax is imposed without regard to tax liability for taxable net income under other provisions of law. If a person other than a corporation has net income assignable to this state he is liable for the $5 whether or not he has taxable net income subject to the tax under other provisions of law.

290.362 TAXATION OF NATIONAL BANK DIVIDENDS

HISTORY. 1941 c 18 s 2.

290.37 RETURNS

HISTORY. Amended, 1951 c 609 s 2; 1953 c 664 s 1.

290.38 JOINT RETURNS OF HUSBAND AND WIFE; DEATH OF SPOUSE

HISTORY. 1933 c 495 s 34; 1953 c 664 s 2.

Lindstrom and Carlson operated a business at a loss during a portion of 1942. A partnership was formed commencing Jan. 1, 1943, consisting of Carlson and his wife, Inez, and Lindstrom and his wife, Marion. The business during 1943 yielded a net profit for 1943 of $26,000. The commissioner of taxation determined the partnership was not valid for purposes of determining Minnesota income tax liability. He added the 1943 Inez Carlson partnership income of $6,453.18 to that of her husband, Fred C. Carlson, and assessed a tax thereon. This was an error. Activities of Carlson and Lindstrom in behalf of the business were substantially the same in 1942 and 1943. On the other hand, the activities of Inez Carlson were extensive and valuable to the business in 1943 after she became a partner and the services performed by her resulted in the addition of at least 20 new toys and games to a line of business conducted by the partnership. Her activities constituted vital service to the partnership and the income of Inez Carlson was her individual income and should have been taxed as such and should not have been added to that of Fred C. Carlson. Fred C. Carlson v Commissioner, MBTA, May 18, 1948, 303.

290.41 INFORMATION RETURNS

HISTORY. Amended, 1951 c 609 s 3, 4; 1951 c 648 s 4.

290.42 DATE OF FILING

HISTORY. Amended, 1949 c 734 s 12; 1951 c 607 s 1; 1953 c 622 s 1.

Licenses are required when Laws 1949, Chapter 211, becomes effective on May 1. New licenses are required, the existing license is not sufficient. OAG May 2, 1949 (135-B-6-E).

290.43 WHERE FILED

While bald intent never changes domicile, a clear and determined intent to change one's domicile is not defeated by a retention of some of the external indicia of residence. During all of 1946, the year in question, taxpayer and his wife lived in Chicago. They were happy there and content to continue to live and make Chicago their home. Taxpayer, an architect by profession, resided in Rochester until 1941 when he accepted employment with the federal government. Between 1941 and 1947 he resided in various cities throughout the United States and, finally, in 1947 resigned his federal position and located in Minneapolis. The order of the commissioner assessing taxpayer a tax for the calendar year of 1946 is reversed. MBTA, Oct. 7, 1953, 406.

290.45 TAX PAID WHEN RETURN FILED

HISTORY. Amended, 1949 c 734 s 15; 1951 c 607 s 2.

290.47 FAILURE TO MAKE RETURN OR PAY TAX

There must be a partnership in reality and not a mere pretense of one to entitle the partners to divide the income tax burden according to their respective interests as they appear on the face of the articles of partnership; and where a father as sole owner conveyed undivided interests in realty occupied by business to each of six children, some of whom were minors, and upon appointment as guardian, transferred the property of minors to a partnership of himself and other children under agreement limiting partnership of minors, preventing assignment of their interests and subjecting their share of the profits to the decision of others, the minors performing no service and contributing no capital and not active in the business, the partnership income of the minors was taxable to the father. State v Hitchcock, 228 M 335, 37 NW(2d) 378.

In order to prove defendant's guilt in an attempt to defeat or evade a tax, the burden is on the government of proving that a tax is due the government from the accused for each of the years charged; that the accused attempted to evade the tax; and his attempt was wilful. Banks v United States, 204 F(2d) 666.

290.49 ASSESSMENT, COLLECTION

HISTORY. 1933 c 405 s 46; Ex1936 c 87 s 1; Ex1937 c 49 s 24; Mason's Supp s 2394-46; 1939 c 59 s 2; 1939 c 446 s 14; 1941 c 550 s 1; 1943 c 656 s 15; 1945 c 604 s 12; 1947 c 635 s 14; 1949 c 734 s 13; 1951 c 269 s 1; 1951 c 649 s 1-4.

A written request for an assessment of decedent's income which was made four months prior to the filing of the return, is not effective to reduce the normal three and one-half year period within which an additional assessment can be made. Re Sjoquist, MBTA, Dec. 5, 1952, 466.

290.50 OVERPAYMENTS, REFUND

HISTORY. Amended, 1949 c 734 s 14; 1951 c 649 s 5-7; 1953 c 625 s 1.

Period during which claims for refund of erroneous or illegal income tax assessments may be filed. 32 MLR 657.

290.51 AGREEMENTS

HISTORY. 1939 c 446 s 18.

290.52 ADMINISTRATION AND ENFORCEMENT

A lack of absolute integrity in the handling of a client's funds and in conducting financial transactions with others, whether it stems from the habitual and excessive use of liquor or from an innate weakness of character, disqualifies a lawyer from continuing the practice of his profession. In Re Boland, ... M ....., 57 NW(2d) 809.

A person convicted of an income tax evasion is not the type of person who would be influenced or profited by the supervision of a probation officer. United States v Banks, 108 F. Supp. 14.

290.53 PENALTIES, INTEREST

HISTORY. Amended, 1951 c 606 s 1; 1953 c 634 s 1.

The right to discovery of income tax returns. 37 MLR 399.

290.55 Unnecessary.

290.60 PAYMENT OF EXPENSES

Laws 1949, Chapter 740, Section 31, Subdivision 6, appropriated $125,000 annually for the biennium ending June 30, 1951, the money being temporarily taken from the income of the income tax school fund to be used by the income tax division for the payment of the cost of collecting the taxes imposed by the Veterans Adjusted Compensation Act. The income tax school fund is to be thereafter reimbursed out of moneys in the veterans adjusted compensation fund. OAG Sept. 2, 1949 (9-A).

290.62 DISTRIBUTION; REFUNDS

Where dissolved district held funds paid to it from income tax distribution under section 290.62, the statutory provisions then in effect required that such funds be used for payment of bonded indebtedness and when these funds were turned over to the district to which the dissolved district was attached, such district has authority to pay out the money in payment of the bonds of the dissolved district. OAG June 5, 1950 (166-E-3).

290.623 Repealed, 1947 c 633 s 22.

290.65 MEMBERS OF ARMED FORCES, EXEMPTIONS

HISTORY. Amended, 1951 c 648 s 1-3.

290.67 EFFECTIVE DATES

In ascertaining legislative intent, administrative interpretations of a statute may be considered, but where such interpretations are of comparatively short duration their weight is correspondingly diminished; nevertheless, they are entitled to some consideration, especially where intervening sessions of the legislature has given interested parties, who may have deemed themselves prejudiced by such interpretation, an opportunity to urge corrective amendments to change the course of such interpretation. Gale v Commissioner of Taxation, 228 M 345, 37 NW(2d) 711.

290.69 EFFECTIVE DATE, CERTAIN SECTIONS

HISTORY. 1951 c 649 s 8.

290.91 DESTRUCTION OF INCOME TAX RETURNS

The microfilming of income tax returns preparatory to destruction whereby the employee of the microfilm company could redevelop microfilm of taxpayers' income tax in process of checking film for defects is a violation of section 290.61. OAG Aug. 14, 1951 (531-G).