

CHAPTER 290

INCOME AND EXCISE TAXES

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290.01 DEFINITIONS.

[For text of subds 1 to 18, see M.S.1984]

Subd. 19. Net income. The term "net income" means the gross income, as defined in subdivision 20, less the following deductions to the extent allowed by section 290.18, subdivision 1:

- (a) for corporations, the deductions allowed by section 290.09;
- (b) for individuals, the deductions allowed in section 290.088, without regard to sections 290.18, subdivision 1 if the taxpayer elects to compute the taxes under sections 290.06, subdivision 2c, paragraph (a) or (c); 290.089; and 290.09; and
- (c) for estates and trusts, the deduction allowed by section 290.088, without regard to section 290.18, subdivision 1 if the taxpayer elects to compute the taxes under section 290.06, subdivision 2c, paragraph (c).

Subd. 20. Gross income. Except as otherwise provided in this chapter, the term "gross income," as applied to corporations includes every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealing in, property; income derived from the transaction of any trade or business; and income derived from any source.

The term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year,

with the modifications specified in this subdivision and in subdivisions 20a to 20f. For estates and trusts the adjusted gross income shall be their federal taxable income as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this subdivision and in subdivisions 20a to 20f.

(i) The Internal Revenue Code of 1954, as amended through December 31, 1980, and as amended by sections 302(b) and 501 to 509 of Public Law Number 97-34, shall be in effect for taxable years beginning after December 31, 1980 including the provisions of section 404 (relating to partial exclusions of dividends and interest received by individuals) of the Crude Oil Windfall Profit Tax Act of 1980, Public Law Number 96-223. The provisions of Public Law Number 96-471 (relating to installment sales) sections 122, 123, 126, 201, 202, 203, 204, 211, 213, 214, 251, 261, 264, 265, 311(g)(3), 313, 314(a)(1), 321(a), 501 to 507, 811, and 812 of the Economic Recovery Tax Act of 1981, Public Law Number 97-34 and section 113 of Public Law Number 97-119 shall be effective at the same time that they become effective for federal income tax purposes.

(ii) The Internal Revenue Code of 1954, as amended through December 31, 1981, shall be in effect for taxable years beginning after December 31, 1981. The provisions of sections 205(a), 214 to 222, 231, 232, 236, 247, 251, 252, 253, 265, 266, 285, 288, and 335 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law Number 97-248, section 6(b)(2) and (3) of the Subchapter S Revision Act of 1982, Public Law Number 97-354, section 517 of Public Law Number 97-424, sections 101(c) and (d), 102(a), (aa), (f)(4), (g), (j), (l), 103(c), 104(b)(3), 105, 305(d), 306(a)(9) of Public Law Number 97-448, and sections 101 and 102 of Public Law Number 97-473 shall be effective at the same time that they become effective for federal income tax purposes. The Payment-in-Kind Tax Treatment Act of 1983, Public Law Number 98-4, shall be effective at the same time that it becomes effective for federal income tax purposes.

(iii) The Internal Revenue Code of 1954, as amended through January 15, 1983, shall be in effect for taxable years beginning after December 31, 1982.

(iv) The Internal Revenue Code of 1954, as amended through December 31, 1983, shall be in effect for taxable years beginning after December 31, 1983. The provisions of sections 13, 17, 25(b), 31, 32, 41 to 43, 52, 55, 56, 71 to 74, 77, 81, 82, 91, 92, 94, 101 to 103, 105 to 108, 111 to 113, 147(c), 171, 172, 174, 175, 179(a), 221, 223, 224, 421(b), 432, 481, 491, 512, 522 to 524, 554 to 557, 561, 611(a), 621 to 623, 626 to 628, 711(c), 712(d), 713(b), (e), (g), and (h), 721(a), (b), (d), (g), (i), (o), (p), (r), (t), and (w), 722(e), 1001, 1026, 1061 to 1064, 1066, 1076, 1078, and 2638(b) of the Deficit Reduction Act of 1984, Public Law Number 98-369, and section 1 of Public Law Number 98-611 shall be effective at the same time that they become effective for federal income tax purposes.

(v) The Internal Revenue Code of 1954, as amended through May 25, 1985, shall be in effect for taxable years beginning after December 31, 1984.

References to the Internal Revenue Code of 1954 in subdivisions 20a, 20b, 20e, and 20f mean the code in effect for the purpose of defining gross income for the applicable taxable year.

Subd. 20a. Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

(1) interest income on obligations of any state other than Minnesota or a political subdivision of any other state exempt from federal income taxes under the Internal Revenue Code of 1954;

(2) income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(3) interest income from qualified scholarship funding bonds as defined in section 103(e) of the Internal Revenue Code of 1954, if the nonprofit corporation is domiciled outside of Minnesota;

(4) exempt-interest dividends, as defined in section 852(b)(5)(A) of the Internal Revenue Code of 1954, not included in federal adjusted gross income pursuant to section 852(b)(5)(B) of the Internal Revenue Code of 1954, except for that portion of exempt-interest dividends derived from interest income on obligations of the state of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;

(5) for an estate or trust, the amount of any loss from a source outside of Minnesota which is not allowed under section 290.17 including any capital loss or net operating loss carryforwards or carrybacks resulting from the loss;

(6) to the extent deducted in computing the estate or trust's federal taxable income, interest, taxes and other expenses which are not allowed under section 290.10, clause (9) or (10); and

(7) losses from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax.

Subd. 20b. Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

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

(2) the portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to 40 per centum of the portion of the gain;

(3) losses, not otherwise reducing federal adjusted gross income assignable to Minnesota, arising from events or transactions which are assignable to Minnesota under the provisions of sections 290.17 to 290.20, including any capital loss or net operating loss carryforwards or carrybacks or out of state loss carryforwards resulting from the losses, and including any farm loss carryforwards or carrybacks;

(4) if included in federal adjusted gross income, the amount of any overpayment of income tax to Minnesota, or any other state, for any previous taxable year, whether the amount is received as a refund or credited to another taxable year's income tax liability;

(5) the amount of any distribution from a qualified pension or profit-sharing plan included in federal adjusted gross income in the year of receipt to the extent of any contribution not previously allowed as a deduction by reason of a change in federal law which was not adopted by Minnesota law for a taxable year beginning in 1974 or later;

(6) pension income as provided by section 290.08, subdivision 26;

(7) the first \$3,000 of compensation for personal services in the armed forces of the United States or the United Nations, and the next \$2,000 of compensation for personal services in the armed forces of the United States or the United Nations wholly performed outside the state of Minnesota. This modification does not apply to compensation defined in clause (6);

(8) unemployment compensation to the extent includible in gross income for federal income tax purposes under section 85 of the Internal Revenue Code of 1954;

(9) for an estate or trust, the amount of any income or gain which is not assignable to Minnesota under the provisions of section 290.17;

(10)(a) income from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax; (b) to the extent included in computing federal adjusted gross income, expenses and other items allocable to the business of mining or producing iron ore, the mining or production of which is subject to the occupation tax imposed by section 298.01, subdivision 1, shall be allowed as a subtraction to the extent that the expenses or other items are included in computing the modifications provided in section 290.01, subdivision 20a, clause (7) or paragraph (a) of this clause and to the extent that the expenses or other items are not deductible, capitalizable, retainable in basis, or taken into account by allowance or otherwise in computing the occupation tax. Occupation taxes imposed under chapter 298, royalty taxes imposed under chapter 299, and depletion expenses may not be subtracted under this paragraph;

(11) to the extent included in federal adjusted gross income, distributions from a qualified governmental pension plan which represent a return of designated employee contributions to the plan and which contributions were included in gross income pursuant to Minnesota Statutes 1984, section 290.01, subdivision 20a, clause (18). The provisions of this clause shall apply before the provisions of clause (6) apply and an amount subtracted under this clause may not be subtracted under clause (6); and

(12) to the extent included in federal adjusted gross income, distributions from an individual retirement account which represent a return of contributions if the contributions were included in gross income pursuant to Minnesota Statutes 1984, section 290.01, subdivision 20a, clause (17). The distribution shall be allocated first to return of contributions included in gross income until the amount of the contributions has been exhausted.

Subd. 20c. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 20d. **Modification for amounts transferred to surplus.** Amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, for corporate taxpayers, to the extent that the amounts were accumulated through deductions from gross income or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, but only to the extent that the amounts resulted in a reduction of the tax imposed by this chapter and amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received, but only to the extent that such amounts resulted in a reduction of the tax imposed by this chapter.

Subd. 20e. **Modification in computing taxable income of the estate of a decedent.** Amounts allowable under section 2053 or 2054 of the Internal Revenue Code of 1954 in computing federal estate tax liability shall not be allowed as a deduction (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or any person unless an election is made for federal income tax purposes under section 642(g) of the Internal Revenue Code of 1954. The election made for federal tax purposes under section 642(g) of the Internal Revenue Code of 1954 is binding for Minnesota tax purposes.

Subd. 20f. **Modification for accelerated cost recovery system.** A modification shall be made for the allowable deduction under the accelerated cost recovery system. The allowable deduction for the accelerated cost recovery system as provided in section 168 of the Internal Revenue Code of 1954 shall be the same

amount as provided in that section for individuals, estates, and trusts with the following modifications:

(1) For property placed in service after December 31, 1980, and for taxable years beginning before January 1, 1982, 15 percent of the allowance provided in section 168 of the Internal Revenue Code of 1954 shall not be allowed.

(2)(a) For taxable years beginning after December 31, 1981, and before January 1, 1983, for 15-year real property as defined in section 168 of the Internal Revenue Code of 1954, 40 percent of the allowance provided in section 168 of the Internal Revenue Code of 1954 shall not be allowed and for all other property, 17 percent of the allowance shall not be allowed.

(b) For taxable years beginning after December 31, 1982, and before January 1, 1985, and with respect to property placed in service in taxable years beginning before January 1, 1983, for 15-year real property as defined in section 168 of the Internal Revenue Code of 1954, 40 percent of the allowance provided in section 168 of the Internal Revenue Code of 1954 shall not be allowed and for all other property 20 percent of the allowance shall not be allowed.

(3) For taxable years beginning after December 31, 1984, the allowable deduction shall be the amount provided by section 168 of the Internal Revenue Code of 1954.

(4) For property placed in service after December 31, 1980, for which the taxpayer elects to use the straight line method provided in section 168(b)(3) or a method provided in section 168(e)(2) of the Internal Revenue Code of 1954, the modifications provided in clauses (1) and (2) do not apply.

(5) For property subject to the modifications contained in clause (1) or (2) above, the following modification shall be made after the entire amount of the allowable deduction for that property under the provision of section 168 of the Internal Revenue Code of 1954 has been obtained. The remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

(a) 3 year property - 1 year.

(b) 5 year property - 2 years.

(c) 10 year property - 5 years.

(d) All 15 year property - 7 years.

(6) The basis of property to which section 168 of the Internal Revenue Code of 1954 applies shall be its basis as provided in this chapter and including the modifications provided in this subdivision. The recapture tax provisions provided in sections 1245 and 1250 of the Internal Revenue Code of 1954 shall apply but shall be calculated using the basis provided in the preceding sentence. When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code of 1954 gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to clause (1) or (2) can be written off as provided in clause (5).

(7) The first taxable year after the entire amount of the allowable deduction for that property under the provisions of section 168 of the Internal Revenue Code of 1954 has been obtained, or where the straight line method provided in section 168(b)(3) is used, the last taxable year in which an amount of allowable depreciation for that property under section 168 is obtained, the remaining depreciable basis in those assets for Minnesota purposes that is attributable to the basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code of 1954 to

reflect the investment tax credit shall be allowed as a deduction. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code of 1954.

Subd. 21. **Dividends.** Amounts distributed by a regulated investment company, as that term is defined and limited by section 851 of the Internal Revenue Code of 1954, as amended through December 31, 1984, which are designated as capital gain dividends, as that term is defined in section 852(b) (3) (C) of the Internal Revenue Code of 1954, as amended through December 31, 1984, shall be treated by the shareholders of such a company as gains from the sale or exchange of long-term capital assets as defined in section 290.16, subdivision 3.

[For text of subds 22 and 24, see M.S.1984]

Subd. 26. [Repealed, 1Sp1985 c 14 art 1 s 59]

History: 1985 c 2 s 1; 1Sp1985 c 14 art 1 s 7-12; art 13 s 1; art 21 s 1,2; 1Sp1985 c 16 art 2 s 27

290.012 [Repealed, 1Sp1985 c 14 art 1 s 59]

290.032 LUMP SUM DISTRIBUTION TAX.

Subdivision 1. There is hereby imposed as an addition to the annual income tax for a taxable year of a taxpayer in the classes described in section 290.03 a tax with respect to any distribution received by such taxpayer that is treated as a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1984, and that is subject to tax for such taxable year under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

Subd. 2. The amount of tax imposed by subdivision 1 shall be computed in the same way as the tax imposed under section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1983, except that the initial separate tax shall be an amount equal to ten times the tax which would be imposed by section 290.06, subdivision 2c, if the recipient was an unmarried individual electing to deduct federal income taxes, and the taxable net income, excluding the credits allowed in section 290.06, subdivision 3f, was an amount equal to one-tenth of the excess of

- (i) the total taxable amount of the lump sum distribution for the year, over
- (ii) the minimum distribution allowance, and except that references in section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1983, to paragraph (1)(A) thereof shall instead be references to subdivision 1 of this section.

The amount of any distribution from a qualified pension or profit-sharing plan which is received as a lump sum distribution shall be reduced to the extent of any contribution:

(1) not previously allowed as a deduction by reason of a change in federal law which was not adopted by Minnesota for a taxable year beginning in 1974 or thereafter; or

(2) designated as an employee contribution but which the employing unit picks up and which is treated as an employer contribution and which was taxed on the Minnesota return but not the federal return in the year the contribution was made.

[For text of subd 3, see M.S.1984]

History: 1Sp1985 c 14 art 1 s 13; art 21 s 3

290.05 EXEMPT INDIVIDUALS, ORGANIZATIONS, ESTATES, TRUSTS.

Subdivision 1. The following corporations, individuals, estates, trusts, and organizations shall be exempted from taxation under this chapter, provided that every such person or corporation claiming exemption under this chapter, in whole or in part, must establish to the satisfaction of the commissioner the taxable status of any income or activity:

(a) corporations, individuals, estates, and trusts engaged in the business of mining or producing iron ore and other ores the mining or production of which is subject to the occupation tax imposed by section 298.01; but if any such corporation, individual, estate, or trust engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in section 299.02) shall not be considered as income from the business of mining or producing iron ore within the meaning of this section;

(b) the United States of America, the state of Minnesota or any political subdivision of either agencies or instrumentalities, whether engaged in the discharge of governmental or proprietary functions;

(c) mutual insurance companies or associations, including interinsurers and reciprocal underwriters, that are exempt as provided in the Revenue Act of 1936.

[For text of subd 2, see M.S.1984]

Subd. 3. (a) An organization exempt from taxation under subdivision 2 shall, nevertheless, be subject to tax under this chapter to the extent provided in the following provisions of the Internal Revenue Code:

(i) Section 527 (dealing with political organizations) and (ii) section 528 (dealing with certain homeowners associations) but

notwithstanding this subdivision, shall be considered an organization exempt from income tax for the purposes of any law which refers to organizations exempt from income taxes.

(b) The tax shall be imposed on the taxable income of political organizations or homeowner associations. The tax shall be at the corporate rates. The tax shall only be imposed on income and deductions assignable to this state under sections 290.17 to 290.20. To the extent deducted in computing federal taxable income, the deductions contained in sections 290.09 and 290.21 shall not be allowed in computing Minnesota taxable net income.

[For text of subds 4 to 7, see M.S.1984]

History: 1985 c 229 s 1; 1Sp1985 c 14 art 1 s 14

290.06 RATES OF TAX; CREDITS AGAINST TAX.

[For text of subd 1, see M.S.1984]

Subd. 2c. **Schedules of rates for individuals, estates, and trusts.** (a) The income taxes imposed by this chapter upon married individuals filing joint returns who elect to deduct federal income taxes under section 290.088 must be computed by applying to their taxable net income the following schedule of rates:

If taxable net income is:
not over \$875

over \$875 but not
over \$1,750

The tax is:
1.5 percent

\$13 plus 2.0 percent of the
excess over \$875

over \$1,750 but not over \$3,500	\$31 plus 2.9 percent of the excess over \$1,750
over \$3,500 but not over \$5,375	\$81 plus 4.8 percent of the excess over \$3,500
over \$5,375 but not over \$7,000	\$171 plus 5.9 percent of the excess over \$5,375
over \$7,000 but not over \$7,125	\$267 plus 6.1 percent of the excess over \$7,000
over \$7,125 but not over \$8,875	\$275 plus 7.2 percent of the excess over \$7,125
over \$8,875 but not over \$12,375	\$401 plus 8.3 percent of the excess over \$8,875
over \$12,375 but not over \$14,000	\$691 plus 9.3 percent of the excess over \$12,375
over \$14,000 but not over \$16,000	\$842 plus 10 percent of the excess over \$14,000
over \$16,000 but not over \$21,500	\$1,042 plus 11 percent of the excess over \$16,000
over \$21,500 but not over \$22,125	\$1,647 plus 11.3 percent of the excess over \$21,500
over \$22,125 but not over \$25,500	\$1,718 plus 12.3 percent of the excess over \$22,125
over \$25,500 but not over \$28,500	\$2,133 plus 12.6 percent of the excess over \$25,500
over \$28,500 but not over \$31,750	\$2,511 plus 13.7 percent of the excess over \$28,500
over \$31,750	\$2,957 plus 14.0 percent of the excess over \$31,750

(b) The income taxes imposed by this chapter upon all other married individuals filing joint returns must be computed by applying to their taxable net income the following schedule of rates:

If taxable net income is: not over \$1,200	The tax is: 1.7 percent
over \$1,200 but not over \$1,700	\$20 plus 2.1 percent of the excess over \$1,200

over \$1,700 but not over \$2,700	\$31 plus 2.3 percent of the excess over \$1,700
over \$2,700 but not over \$5,600	\$54 plus 3.3 percent of the excess over \$2,700
over \$5,600 but not over \$9,100	\$150 plus 5.3 percent of the excess over \$5,600
over \$9,100 but not over \$12,600	\$335 plus 6.8 percent of the excess over \$9,100
over \$12,600 but not over \$17,800	\$573 plus 8.5 percent of the excess over \$12,600
over \$17,800 but not over \$30,800	\$1,015 plus 9.3 percent of the excess over \$17,800
over \$30,800	\$2,224 plus 9.9 percent of the excess over \$30,800

(c) The income taxes imposed by this chapter upon unmarried individuals, married individuals filing separate returns, estates, and trusts that elect to deduct federal income taxes under section 290.088 must be computed by applying to taxable net income the following schedule of rates:

If taxable net income is:	The tax is:
not over \$700	1.3 percent
over \$700 but not over \$1,400	\$9 plus 1.9 percent of the excess over \$700
over \$1,400 but not over \$2,800	\$22 plus 3.2 percent of the excess over \$1,400
over \$2,800 but not over \$4,300	\$67 plus 5.4 percent of the excess over \$2,800
over \$4,300 but not over \$5,700	\$148 plus 6.9 percent of the excess over \$4,300
over \$5,700 but not over \$7,100	\$245 plus 8.4 percent of the excess over \$5,700
over \$7,100 but not over \$9,900	\$362 plus 9.8 percent of the excess over \$7,100
over \$9,900 but not over \$12,800	\$637 plus 11.1 percent of the excess over \$9,900
over \$12,800 but not over \$15,400	\$959 plus 12.4 percent of the excess over \$12,800

over \$15,400 but not over \$19,400	\$1,281 plus 13.6 percent of the excess over \$15,400
over \$19,400	\$1,825 plus 14 percent of the excess over \$19,400

(d) The income taxes imposed by this chapter upon all other unmarried individuals, married individuals filing separate returns, estates, and trusts must be computed by applying to taxable net income the following schedule of rates:

If taxable net income is:	The tax is:
not over \$300	1 percent
over \$300 but not over \$600	\$3 plus 1.3 percent of the excess over \$300
over \$600 but not over \$900	\$7 plus 1.6 percent of the excess over \$600
over \$900 but not over \$1,300	\$12 plus 2.1 percent of the excess over \$900
over \$1,300 but not over \$2,000	\$20 plus 2.7 percent of the excess over \$1,300
over \$2,000 but not over \$2,800	\$39 plus 3.7 percent of the excess over \$2,000
over \$2,800 but not over \$4,300	\$69 plus 4.5 percent of the excess over \$2,800
over \$4,300 but not over \$6,400	\$136 plus 6.1 percent of the excess over \$4,300
over \$6,400 but not over \$9,400	\$264 plus 7.5 percent of the excess over \$6,400
over \$9,400 but not over \$16,200	\$489 plus 9.3 percent of the excess over \$9,400
over \$16,200	\$1,122 plus 9.9 percent of the excess over \$16,200

(e) In lieu of a tax computed according to the rates set forth in this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year is less than an amount determined by the commissioner must be computed in accordance with tables prepared and issued by the commissioner of revenue based on income brackets of not more than \$100. The amount of tax for each bracket shall be computed at the rates set forth in this subdivision, provided that the commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case it may be increased to \$1.

(f) An individual who is not a Minnesota resident for the entire year must compute his Minnesota income tax as provided in this subdivision. After the application of the nonrefundable credits provided in this chapter, the tax liability must then be multiplied by a fraction in which:

(1) The numerator is the individual's Minnesota sourced federal adjusted gross income, computed as if the provisions of section 290.081, clause (a), 290.17, subdivision 2, or 290.171 applied; and

(2) the denominator is the individual's federal adjusted gross income.

Subd. 2d. Inflation adjustment of brackets. For taxable years beginning after December 31, 1985, the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed in subdivision 2c shall be adjusted for inflation. For the purpose of making the adjustment as provided in this subdivision all of the rate brackets provided in subdivision 2c shall be the rate brackets as they existed for taxable years beginning after December 31, 1984 and before January 1, 1986. The rate applicable to any rate bracket must not be changed. The dollar amounts setting forth the tax shall be adjusted to reflect the changes in the rate brackets. The rate brackets as adjusted must be rounded to the nearest \$10 amount. If the rate bracket ends in \$5, it must be rounded up to the nearest \$10 amount.

The commissioner shall adjust the rate brackets by the percentage determined under section 1(f) of the Internal Revenue Code of 1954, as amended through December 31, 1984, except that in section 1(f)(3)(B) the word "1984" shall be substituted for the word "1983." The commissioner shall then determine the percent change from the 12 months ending on September 30, 1984, to, for 1986, the 12 months ending on September 30, 1985, and in each subsequent year, from the 12 months ending on September 30, 1984, to the 12 months ending on September 30 of the preceding year. The determination of the commissioner pursuant to this subdivision shall not be considered a "rule" and shall not be subject to the administrative procedures act contained in chapter 14.

No later than December 15 of each year, the commissioner shall announce the specific percentage that will be used to adjust the tax rate brackets, the maximum standard deduction amount, and the personal credit amounts.

Subd. 2f. Suspension of inflation adjustments. (a) The rate brackets, the personal credit amounts established pursuant to subdivisions 3f and 3g, and the maximum standard deduction provided under section 290.089, subdivision 3, shall not be adjusted for inflation pursuant to subdivision 2d, for taxable years beginning during a calendar year if the following conditions occur:

(1) the legislature and the governor have enacted a budget providing for an appropriation to the budget reserve account of at least \$250,000,000 for the biennium during which the calendar year began or, in the second half of an odd-numbered year, for the biennium which began during the calendar year; and

(2) the commissioner of finance estimated at the time the budget is enacted that the state would receive sufficient general fund receipts during the biennium to fund the full appropriation to the budget reserve account; and

(3) on or before September 15 of the calendar year it is estimated by the commissioner of finance that the probable general fund receipts from taxes and other sources will be less than estimated and consequently the amount available for the remainder of the biennium after transferring any available funds in the budget reserve account will be less than the amount estimated or allotted to be expended or incurred from the general fund; and

(4) the additional receipts resulting from the suspension of the inflation adjustments, together with all other general fund revenues, are not estimated to

exceed the sum of the amounts necessary to fund in full all appropriations, including the appropriation to the budget reserve account, in which case the commissioner of revenue shall provide for partial inflation adjustments sufficient to fund in full the appropriations.

(b) The suspension of inflation adjustments shall apply only during the biennium in which the conditions specified in paragraph (a) have been satisfied.

(c) For taxable years beginning during a calendar year in which the inflation adjustments are suspended pursuant to this subdivision and for which paragraph (b) will result in the inflation adjustments being suspended for only one-half of the taxable year, the commissioner of revenue shall adjust the withholding tables, notwithstanding section 290.92, subdivision 2a, so that the additional tax imposed is withheld and remitted by employers during the first six months of the taxable year as if the suspension were in effect for the entire year.

Subd. 3d. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 3e. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 3f. **Credits against tax.** Subject to the provisions of subdivision 3g the taxes due under the computation in accordance with this section shall be credited with the following amounts:

(1) In the case of an unmarried individual or a married individual filing separately, \$70;

(2) In the case of married individuals filing a joint return, \$140;

(3) In the case of an individual, \$70 for each person who was claimed by the individual as a dependent on the individual's federal income tax return as provided in sections 151(e) and 152 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

(4)(a) In the case of an unmarried individual or a married individual filing separately who has attained the age of 65 before the close of his taxable year, an additional \$70;

(b) In the case of an unmarried individual or a married individual filing separately who is blind at the close of the taxable year, an additional \$70;

(c) In the case of married individuals filing a joint return, an additional \$70 for each spouse who has attained the age of 65 before the close of the individual's taxable year, and an additional \$70 for each spouse who is blind at the close of the individual's taxable year;

(d) In the case of an individual, another \$70 for each person who is blind and was claimed as a dependent of the individual under clause (3);

(e) For the purposes of subparagraphs (b), (c) and (d) of paragraph (4), an individual is blind if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(f) In the case of an unmarried individual or married individual filing separately who is deaf at the close of the taxable year, an additional \$70.

(g) In the case of married individuals filing a joint return, an additional \$70 for each spouse who is deaf at the close of the taxable year.

(h) In the case of an individual, an additional \$70 for each person who is deaf and was claimed as a dependent of the individual under clause (3).

(i) For the purposes of subparagraphs (f), (g) and (h) of paragraph (4), an individual is deaf if the average loss in the speech frequencies (500-2000 Hertz) in

the better ear, unaided, is 92 decibels, American National Standards Institute, or worse.

(5) (a) In the case of an unmarried individual or a married individual filing separately who is a quadriplegic at the close of the taxable year, an additional \$70;

(b) In the case of married individuals filing a joint return, an additional \$70 for each spouse who is a quadriplegic at the close of the taxable year;

(c) In the case of an individual, another \$70 for each person who is quadriplegic and was claimed as a dependent of the individual under clause (3); and

(d) For the purposes of subparagraphs (a), (b) and (c) of paragraph 5, "quadriplegic" means an individual who has a congenital or traumatic partial or total loss of all four limbs or who has a disability that substantially impairs the functioning of all four limbs.

(6) In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under this chapter is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by sections 69.54 to 69.56.

Subd. 3g. **Inflation adjustment of credits.** For taxable years beginning after December 31, 1985, the credits provided for individuals in subdivision 3f shall be adjusted for inflation. The dollar amount of each credit for the prior year in subdivision 3f shall be increased in the same manner as provided in subdivision 2d for the expansion of the tax rate brackets.

[For text of subd 10, see M.S.1984]

Subd. 11. **Contributions to political parties and candidates.** A taxpayer may take a credit against the tax due under this chapter of 50 percent of his contributions to candidates for elective state or federal public office and to any political party. The maximum credit for an individual shall not exceed \$50 and, for a married couple filing jointly, shall not exceed \$100. No credit shall be allowed under this subdivision for a contribution to any candidate, other than a candidate for elective judicial office or federal office, who has not signed an agreement to limit his campaign expenditures as provided in section 10A.32, subdivision 3b. For purposes of this subdivision, a political party means a major political party as defined in section 200.02, subdivision 7, or a minor political party qualifying for inclusion on the income tax or property tax refund form under section 10A.31, subdivision 3a. A major or minor party includes the aggregate of the party organization within each house of the legislature, the state party organization, and the party organization within congressional districts, counties, legislative districts, municipalities, and precincts. A "federal office" means the office of the president or vice president of the United States or the office of United States senator or congressman from Minnesota.

This credit shall be allowed only if the contribution is verified in the manner the commissioner of revenue shall prescribe.

Subd. 14. [Repealed, 1Sp1985 c 14 art 1 s 59]

[For text of subd 15, see M.S.1984]

Subd. 16. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 17. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 18. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 19. [Repealed, 1Sp1985 c 14 art 1 s 59]

History: 1985 c 210 art 2 s 1; 1Sp1985 c 14 art 1 s 15-20

290.067 DEPENDENT CARE CREDIT.

Subdivision 1. **Amount of credit.** A taxpayer may take as a credit against the tax due from him and his spouse, if any, under this chapter an amount equal to the dependent care credit for which he is eligible pursuant to the provisions of section 21 of the Internal Revenue Code of 1954, as amended through December 31, 1984, subject to the limitations provided in subdivision 2.

[For text of subds 2 to 5, see M.S.1984]

History: *1Sp1985 c 14 art 21 s 4*

290.068 CREDIT FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.

Subdivision 1. **Credit allowed.** In addition to the deduction provided in section 290.09, a corporation, other than a corporation with a valid election in effect under section 290.9725, is allowed a credit against the tax imposed by this chapter for the taxable year equal to

- (a) 12.5 percent of the first \$2 million of the excess (if any) of
 - (1) the qualified research expenses for the taxable year, over
 - (2) the base period research expenses; and
- (b) 6.25 percent on all of such excess expenses over \$2 million.

Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings given.

(a) "Qualified research expenses" means (i) qualified research expenses as defined in section 30(b) and (e) of the Internal Revenue Code, except it shall not include expenses incurred for basic research conducted outside the state of Minnesota pursuant to section 30(e); or (ii) contributions to a nonprofit corporation established and operated pursuant to the provisions of chapter 317 for the purpose of promoting the establishment and expansion of business in this state, provided the contributions are invested by the nonprofit corporation for the purpose of providing funds for small, technologically innovative enterprises in Minnesota during the early stages of their development.

(b) "Qualified research" means qualified research as defined in section 30(d) of the Internal Revenue Code, except that the term shall not include qualified research conducted outside the state of Minnesota.

(c) "Base period research expenses" means base period research expenses as defined in section 30(c) of the Internal Revenue Code, except that "December 31, 1981" shall be substituted for "June 30, 1981" in subparagraph (B) of paragraph (2) and the definitions contained in clauses (a) and (b) shall apply.

(d) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended through December 31, 1984.

Subd. 3. **Limitation; carryback and carryover.** (a)(1) The credit for the taxable year shall not exceed the liability for tax. "Liability for tax" for purposes of this section means the tax imposed under this chapter for the taxable year reduced by the sum of the nonrefundable credits allowed under this chapter.

(2) In the case of a corporation which is a partner in a partnership, the credit allowed for the taxable year shall not exceed the lesser of the amount determined under clause (1) for the taxable year or an amount (separately computed with respect to the corporation's interest in the trade or business or entity) equal to the amount of tax attributable to that portion of taxable income which is allocable or apportionable to the corporation's interest in the trade or business or entity.

(b) If the amount of the credit determined under this section for any taxable year exceeds the limitation under clause (a), the excess shall be a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the 15 succeeding taxable years. The entire amount of the excess unused credit for the taxable year shall be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. The amount of the unused credit which may be added under this clause shall not exceed the taxpayer's liability for tax less the research credit for the taxable year.

For the purposes of sections 290.46 and 290.50, if the claim for refund relates to an overpayment attributable to a research and experimental expenditure credit carryback under this subdivision, in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period of limitation shall be that period which ends with the expiration of the 15th day of the 45th month following the end of the taxable year in which the research and experimental expenditure credit arises which results in the carryback. With respect to any portion of a credit carryback from a taxable year attributable to a loss carryback from a subsequent taxable year, the period of limitations shall be that period which ends with the expiration of the 15th day of the 45th month following the end of the subsequent taxable year. In any case in which a taxpayer is entitled to a refund in a carryback year due to the carryback of a research and experimental expenditure credit, interest shall be computed only from the end of the taxable year in which the credit arises. With respect to any portion of a credit carryback from a taxable year attributable to a loss carryback from a subsequent taxable year, interest shall be computed from the end of the subsequent taxable year.

Subd. 4. Partnerships. In the case of partnerships the credit shall be allocated in the same manner provided by section 30(f)(2) of the Internal Revenue Code.

Subd. 5. Adjustments; acquisitions and dispositions. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period shall be adjusted in the same manner provided by section 30(f)(3) of the Internal Revenue Code, except that "December 31, 1980" shall be substituted for "June 30, 1980."

[For text of subd 6, see M.S.1984]

History: 1Sp1985 c 14 art 1 s 21-23; art 21 s 5-7

290.069 SMALL BUSINESS INVESTMENT CREDITS.

[For text of subd 1, see M.S.1984]

Subd. 2. Technology transfer credit. A credit may be claimed against the taxes imposed by this chapter in an amount equal to 30 percent of the net value of the technology transferred to a qualified small business if the following conditions are satisfied:

(a) The commissioner certifies that the technology has the value claimed by the transferor taxpayer.

(b) The transferor taxpayer is the exclusive and undisputed owner of the technology at the time the transfer is made.

(c) Except as provided in paragraph (h), the transferor retains no proprietary or financial interest in the technology subsequent to its transfer to the qualified small business and no credit is claimed for the transfer of the technology in a prior or

subsequent taxable year, except pursuant to the carryover provisions of subdivision 5.

(d) The credit shall apply only to the first \$1,000,000 of the net value of the technology transferred during the taxable year. The value of the technology shall not exceed the total qualified research expenses, as defined in section 290.068, subdivision 2, expended by the transferor to create or develop the technology. For purposes of this paragraph, "net value" means the total value of the technology less any payments received from the transferee and less the value of any equity interest in the transferee received by the transferor in exchange for the technology. For purposes of determining the value of the equity interest, the total value of the transferee shall be deemed to be not less than the value of the technology transferred, less any cash payment made to the transferor.

(e) The taxpayer has not deducted the value of the transferred property from income under any other provisions of this chapter, except that the costs of developing the technology may have been deducted as a business expense or depreciated or included in the computation of the research and experimental expenditure credit pursuant to section 290.068.

(f) The transferee business entity may not be a subsidiary or affiliate of the transferor taxpayer. The principal place of business of the transferee business entity is located in the technology corridor project area as authorized by Laws 1984, chapter 654, article 2, section 15, clause (k).

(g) The transferee makes a substantial investment in acquiring or developing the technology. The requirements of this clause are satisfied if over a two-year period beginning not later than the date of the transfer (1) the transferee pays the transferor an amount equal to 20 percent of the value of the technology in return for acquisition of the rights to the technology, or if (2) the transferee expends an equivalent amount for equipment, materials, wages, or other direct costs to develop, produce, or otherwise use the technology. The requirements of this paragraph may not be satisfied by granting the transferor an equity interest as provided by paragraph (h).

(h) The transferor may receive in exchange for the transfer of the technology an equity interest in the transferee, but this interest may not exceed 25 percent of the capital interest, if the transferee is a partnership, or 25 percent in value of the outstanding stock, if the transferee is a corporation. The transferor's basis in the equity interest shall be reduced by the amount of the credits received pursuant to this subdivision. The transferor may not deduct any loss realized on the sale or exchange of the equity interest.

(i) The maximum credit which is allowed for technology transferred during the taxable year is \$300,000. The maximum credit which is allowable for technology transferred during all taxable years to an entity or a related person to the transferee entity is \$300,000. A person is a related person to the entity if (i) the relationship would result in disallowance of losses under section 267 or 707(b) of the Internal Revenue Code or (ii) the person and the entity are members of the same controlled group or corporation.

The commissioner may require that the taxpayer obtain an appraisal of the value of the transferred technology by a reliable, expert third party. The disclosure to a third party appraiser of information necessary to make an appraisal shall not be subject to the provisions of section 290.61. The commissioner may promulgate administrative rules for appraising the value of transferred technology.

Subd. 2a. Recapture; technology transfer credit. (a) A corporation which receives a tax reduction pursuant to subdivision 2 shall repay to the commissioner an

amount of the tax reduction as specified in paragraph (b) if any of the following conditions occur within a three-year period after the date of transfer of the technology.

- (1) The transferee ceases operations in the technology corridor project area.
- (2) The transferee becomes a subsidiary or affiliate of the transferor.
- (3) The transferee sells, transfers, or otherwise disposes of the rights to technology.
- (4) The transferee fails to make the necessary payments or expenditures required by subdivision 2, paragraph (g).
- (5) The transferee grants an interest to the transferor in violation of subdivision 2, paragraph (h).
- (b) The amount of the repayment is determined pursuant to the following schedule:

Occurrence of event causing recapture	Repayment portion
Less than six months	100 percent
Six months or more but less than 12 months	83-1/3 percent
12 months or more but less than 18 months	66-2/3 percent
18 months or more but less than 24 months	50 percent
24 months or more but less than 30 months	33-1/3 percent
30 months or more but less than 36 months	16-2/3 percent

[For text of subd 3, see M.S.1984]

Subd. 4. *[Repealed, 1Sp1985 c 14 art 1 s 59]*

Subd. 4a. **Recapture; equity investment credit.** (a) A taxpayer who receives a tax reduction pursuant to Minnesota Statutes 1984, section 290.069, subdivision 4 shall repay to the commissioner an amount of the tax reduction as specified in paragraph (b) if any of the following conditions occur within a four-year period after the date of the investment:

- (1) The taxpayer transfers, sells, or otherwise disposes of the stock other than transfer by the estate of a taxpayer who died after acquiring the stock.
- (2) The taxpayer or a related person acquires an interest in the qualified small business in excess of that permitted by subdivision 4, clause (b)(2).
- (3) The transferee ceases operations in Minnesota.

(b) The amount of the repayment is determined pursuant to the following schedule:

Occurrence of event causing recapture	Repayment portion
Less than six months	100 percent
Six months or more but less than 12 months	87-1/2 percent
12 months or more but less than 18 months	75 percent
18 months or more but less than 24 months	62-1/2 percent
24 months or more but less than 30 months	50 percent
30 months or more but less than 36 months	37-1/2 percent
36 months or more but less than 42 months	25 percent
42 months or more but less than 48 months	12-1/2 percent

(c) If a credit was allowed for a qualified small business whose principal place of business was located in an enterprise zone and the business ceases operations in the zone within three years after the investment is made, the taxpayer shall file an

amended return claiming the credit without regard to Minnesota Statutes 1984, section 290.069, subdivision 4, paragraph (c).

Subd. 4b. Multistate businesses. If a qualified small business is engaged in a business partly within and partly without the state, the credit allowable pursuant to subdivision 2 for technology transferred to the business must be apportioned. The credit determined pursuant to subdivision 2 must be multiplied by the arithmetical average of the qualified small business' property and payrolls, determined as provided by section 290.19, subdivision 1, clauses (2)(a)(2) and (2)(a)(3), using data from the most recently available year. After the technology is transferred, the qualified small business shall certify to the transferor taxpayer its factors under section 290.19, subdivision 1, clauses (2)(a)(2) and (2)(a)(3) for each of the succeeding two tax years. If the factors for either of these years would result in at least a 25 percent change in the allowable credit, the taxpayer shall file an amended return repaying or claiming the difference in the credit. The preceding sentence does not apply if the qualified small business ceases operations in Minnesota and the recapture provisions of subdivision 2a or 4a apply.

Subd. 5. Carryover; other conditions. If the amount of the allowable credit pursuant to subdivision 2 or 3 for the taxable year exceeds the taxpayer's tax liability, the unused credit for the taxable year is a carryover to each of the succeeding five taxable years. The entire amount of the unused credit must be carried to the earliest of the taxable years to which it may be carried. "Tax liability" means the tax imposed by this chapter reduced by the sum of the nonrefundable credits allowed under this chapter except any nonrefundable credits which may be carried back to a prior tax year. The credits allowed by subdivisions 2 and 3 shall only be available to corporations and banks whose tax is computed pursuant to section 290.06, subdivision 1.

The maximum limitations on the amount of credits pursuant to subdivision 2 or 3 shall be determined by aggregating the credits of all the corporations in the controlled group of corporations with the taxpayer. In order to facilitate compliance with and enforcement of this provision the commissioner may require the taxpayer to claim the credit on a combined report of the unitary business or to file a copy of the consolidated federal return with the state return or both.

Subd. 6. Repealer. This section is repealed effective for contributions made to a small business office or to an innovation center public corporation as provided in subdivision 3 and for technology transferred as described in subdivision 2 in taxable years beginning after December 31, 1988.

Subd. 7. Commissioner's power to disallow credit. The commissioner may disallow a credit under subdivision 2 if he determines that the transaction giving rise to the credit was entered into by the parties primarily to reduce taxes and not primarily for an independent business or commercial purpose other than the reduction of taxes.

History: 1985 c 210 art 2 s 2; 1Sp1985 c 14 art 1 s 24-30

290.07 NET INCOME; COMPUTATION, ACCOUNTING PERIOD.

[For text of subds 1 to 4, see M.S.1984]

Subd. 5. Property sold on installment plan. Income from installment sales shall be determined in accordance with the provisions of sections 453, 453A, and 453B of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subd 6, see M.S.1984]

Subd. 7. Deductions, credits; time for taking. The deductions and credits provided for in this chapter shall be taken for a taxable year in which "paid or accrued" or "paid and incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period.

The provisions of sections 461 to 468A of the Internal Revenue Code of 1954, as amended through December 31, 1984, shall determine the taxable year for which a deduction or credit may be taken.

History: *1Sp1985 c 14 art 21 s 8,9*

290.071 INCOME FROM UNITED STATES BONDS AND RECOVERY AMOUNTS.

[For text of subd 1, see M.S.1984]

Subd. 5. Recovery amounts. Income attributable to the recovery during the year of an amount, on account of which a deduction or credit was allowed for a prior taxable year, shall be included in gross income only to the extent that the deduction or credit resulted in a reduction of the tax imposed by this chapter for such prior year.

History: *1Sp1985 c 14 art 21 s 10*

290.077 INCOME IN RESPECT OF DECEDENTS.

[For text of subds 1 and 3, see M.S.1984]

Subd. 4. [Repealed, 1Sp1985 c 14 art 1 s 59]

290.079 INTEREST ON CERTAIN DEFERRED PAYMENTS.

Subdivision 1. Amount constituting interest. For purposes of this chapter, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which section 483 of the Internal Revenue Code of 1954, as amended through December 31, 1984, applies. The treatment of loans with below-market interest rates shall be the same as is provided in section 7872 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

History: *1Sp1985 c 14 art 21 s 11*

290.08 EXEMPTIONS FROM GROSS INCOME.

[For text of subds 1 to 3, see M.S.1984]

Subd. 8. Interest from United States or state of Minnesota. (a) Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; and interest upon obligations of the state of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities. This paragraph does not apply to corporations taxable under section 290.02 or 290.361 or to individuals, estates, or trusts.

(b) The interest on any bond issued under the provisions of any local or special law enacted prior to January 1, 1985, is subject to tax as provided in this chapter, notwithstanding the provisions of the local or special law.

[For text of subds 12 to 20, see M.S.1984]

Subd. 23. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 24. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 26. **Pension income.** (a) **Exclusion.** Gross income shall not include the pension income of a qualified recipient and spouse if the spouse is a qualified recipient. The maximum amount of this exclusion is the following amount:

(1) \$11,000 reduced by the amount of the qualified recipient's and spouse's combined federal adjusted gross income in excess of \$17,000.

(2) Notwithstanding clause (1), in the case of an involuntary lump sum distribution of pension or retirement benefits to volunteer firefighters, the maximum amount of the exclusion is \$11,000. This amount is not subject to reduction for other income and applies without regard to the limitation in paragraph (b), clause (4).

(3) Notwithstanding clause (1), to the extent included in federal adjusted gross income, all railroad retirement benefits of a qualified recipient are excludable without limitation as to level of benefits received, maximum amount, or income offset.

(4) In the case of pension income received from the correctional employees retirement program established pursuant to chapter 352; the state patrol fund retirement fund established pursuant to chapter 352B; the public employees police and fire fund established pursuant to chapter 353; the retirement funds enumerated in section 69.77, subdivision 1a; or similar retirement plans established by another state or a political subdivision of another state, an individual is a qualified recipient without regard to age.

(b) **Definitions.** For purposes of this subdivision the following terms have the meanings given:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1954 in effect for the purpose of defining gross income for the applicable taxable year as provided in section 290.01, subdivision 20.

(2) "Federal adjusted gross income" is the federal adjusted gross income referred to in section 290.01, subdivision 20, for the current taxable year, and includes the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code.

(3) "Pension income" means to the extent included in the taxpayer's federal adjusted gross income the amount received by the taxpayer

(A) from the United States, its agencies or instrumentalities, the Federal Reserve Bank or from the state of Minnesota or any of its political or governmental subdivisions or from any other state or its political or governmental subdivisions, or a Minnesota volunteer firefighter's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or

(B) as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 408, or 409, of the Internal Revenue Code.

(4) "Qualified recipient" means an individual who, at the end of the taxable year, is aged 65 or older or is disabled as defined in section 290A.03, subdivision 9.

History: 1985 c 210 art 1 s 8; 1Sp1985 c 14 art 1 s 31

290.088 DEDUCTION FOR FEDERAL INCOME TAXES; ELECTION.

(a) In determining net income, individuals, estates, and trusts may elect to deduct federal income taxes from gross income after allowing the deductions under section 290.089. If the election is made, the amount of the deduction is determined

under section 290.18, subdivision 2, and the taxpayer must compute the tax according to the schedule contained in section 290.06, subdivision 2c, paragraph (a) or (c), whichever applies.

(b) Individuals, estates, and trusts who elect not to deduct federal income taxes in determining net income, must compute the tax according to the schedule contained in section 290.06, subdivision 2c, paragraph (b) or (d), whichever applies.

History: *1Sp1985 c 14 art 1 s 32*

290.089 DEDUCTIONS FROM GROSS INCOME; INDIVIDUALS.

[For text of subd 1, see M.S.1984]

Subd. 2. Itemized deductions. An amount equal to the amount determined pursuant to section 63(f) of the Internal Revenue Code is allowed with the following adjustments:

(a) add the amount paid to others not to exceed \$650 for each dependent in grades K to 6 and \$1,000 for each dependent in grades 7 to 12, for tuition, textbooks, and transportation of each dependent in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363. As used in this clause, "textbooks" includes books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state. "Textbooks" does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets; doctrines, or worship, nor does it include books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs;

(b) subtract income taxes paid or accrued within the taxable year under this chapter;

(c) subtract income taxes paid to any other state or to any province or territory of Canada; and

(d) if the deduction computed under section 164 of the Internal Revenue Code is not reduced by the amount of the credit or refund allowed under chapter 290A, subtract that amount.

Subd. 3. Standard deduction. In lieu of the deductions provided in subdivision 2, an individual may claim or be allowed a standard deduction as follows:

(a) Subject to modification pursuant to clause (b), the standard deduction shall be an amount equal to ten percent of the gross income of the taxpayer or the joint gross income of a married couple filing a joint return, up to a maximum deduction of \$2,400.

In the case of a married individual filing a separate return, the standard deduction is ten percent of the gross income of the taxpayer, up to a maximum of \$1,200, except that the standard deduction shall not be allowed to either if the net income of one of the spouses is determined without regard to the standard deduction.

(b) For taxable years beginning after December 31, 1985, the maximum amount of the standard deduction shall be adjusted for inflation in the same manner as provided in section 290.06, subdivision 2d, for the expansion of the rate brackets. The commissioner shall then round the maximum amount of the standard deduction

to the nearest hundred dollar amount. When adjusting the maximum amount of standard deduction for inflation, the commissioner shall use the actual dollar amount of the maximum amount of the standard deduction prior to rounding the dollar amounts.

(c) The commissioner of revenue may establish a standard deduction tax table incorporating the rates set forth in section 290.06, subdivision 2c, and the standard deduction. The tax of any individual taxpayer whose gross income is less than \$20,000 shall, if an election is made not to itemize nonbusiness deductions, be computed in accordance with tables prepared and issued by the commissioner of revenue. The tables shall be prepared to reflect the allowance of the standard deduction and the personal and dependent credits.

Subd. 4. [Repealed, 1Sp1985 c 14 art 1 s 59]

[For text of subd 5, see M.S.1984]

Subd. 6. [Repealed, 1Sp1985 c 14 art 1 s 59]

Subd. 7. **Internal Revenue Code.** The Internal Revenue Code referred to in any of the subdivisions of this section means the Internal Revenue Code of 1954, as amended through December 31, 1984.

History: 1Sp1985 c 14 art 1 s 33,34; art 21 s 12

290.09 DEDUCTIONS FROM GROSS INCOME.

Subdivision 1. **Limitations.** Except as provided in this subdivision, the deductions provided in this section from gross income shall only be allowed to corporations in computing net income. The provisions of subdivisions 2, clause (c), and 28 also apply to individuals and trusts to the extent provided in those subdivisions.

Subd. 2. **Trade or business expenses.** (a) **In general.** There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(b) No deduction shall be allowed under this subdivision for any contribution or gift which would be allowable as a deduction under section 290.21 were it not for the percentage limitations set forth in such section;

(c) All expense money paid by the legislature to legislators;

(d) Entertainment, amusement, or recreation expenses shall be allowed under this subdivision only to the extent that they qualify as a deduction under section 274 of the Internal Revenue Code of 1954, as amended through May 25, 1985.

(e) No deduction shall be allowed under this subdivision for illegal bribes, kickbacks, and other payments, fines, and penalties, or treble damage payments under the antitrust laws except as provided in section 162 of the Internal Revenue Code of 1954, as amended through December 31, 1983.

[For text of subd 3, see M.S.1984]

Subd. 4. **Taxes.** Taxes paid or accrued within the taxable year, except (a) income, excise, or franchise taxes imposed by this chapter and income, excise, or franchise taxes paid to any other state or to any province or territory of Canada for which a credit is allowed under section 290.081; (b) taxes assessed against local benefits of a kind deemed in law to increase the value of the property assessed; (c) federal income taxes (including the windfall profit tax on domestic crude oil), by corporations, national and state banks; (d) income, excise, or franchise taxes based on net income paid by a corporation to another state, to a political subdivision of another state, or to the District of Columbia; and (e) tax paid by any corporation or national or state bank to any foreign country or possession of the United States to the extent that a credit against federal income taxes is allowed under the provisions of the Internal Revenue Code of 1954, as amended through December 31, 1983. If the taxpayer's foreign tax credit consists of both foreign taxes deemed paid and foreign taxes actually paid or withheld, it will be conclusively presumed that foreign taxes deemed paid were first used by the taxpayer in its foreign tax credit. Minnesota gross income shall include the amount of foreign tax paid which had been allowed as a deduction in a previous year, provided such foreign tax is later allowed as a credit against federal income tax.

Taxes imposed upon a shareholder's interest in a corporation which are paid by the corporation without reimbursement from the shareholder shall be deductible only by such corporation.

Property taxes shall be allowed as a deduction to the same taxpayer and in the same manner as provided in section 164 of the Internal Revenue Code of 1954, as amended through December 31, 1983, notwithstanding the provisions of section 272.31.

[For text of subds 5 and 6, see M.S.1984]

Subd. 7. **Depreciation.** (A) **Cumulative depreciation.** (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence):

- (1) of property used in the trade or business, or
- (2) of property held for the production of income.

In the case of recovery property as provided in clause (c), the deduction allowable under clause (c) shall be deemed to constitute the reasonable allowance provided by this subdivision, except for the provisions of Part (B) relating to first year depreciation and except with respect to that portion of the basis of the property to which section 167(k) of the Internal Revenue Code of 1954, as amended through December 31, 1984, applies.

(b) The term "reasonable allowance" as used in clause (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the commissioner, under any of the following methods:

- (1) the straight line method.
- (2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1).
- (3) the sum of the years-digits method, and
- (4) any other consistent method productive of an annual allowance, which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in (2).

Nothing in this clause shall be construed to limit or reduce an allowance otherwise allowable under clause (a).

(c) For purposes of this subdivision "reasonable allowance" shall be the accelerated cost recovery system provisions of section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1984, except as provided in this subdivision. In the case of recovery property within the meaning of section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1984, the term "reasonable allowance" as used in clause (a) shall mean 85 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 for property placed in service after December 31, 1980 and for taxable years beginning before January 1, 1982.

For taxable years beginning after December 31, 1981 the term reasonable allowance as used in clause (a) shall mean the following percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1984:

(1) For 3, 5 and 10 year property and for 15 year public utility property the allowable percentage is 83 percent and 80 percent for taxable years beginning after December 31, 1982.

(2) For 15 or 18 year real property the allowable percentage is 60 percent.

For property placed in service after December 31, 1980 the term "reasonable allowance" as used in clause (a) shall mean 100 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 where the taxpayer uses for federal income tax purposes the straight line method provided in section 168(b)(3), (f)(12), or (j)(1) or a method provided in section 168(e)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1984. For property placed in service after December 31, 1980 and for which the full amount of the deduction allowed under section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1984 has been allowed, the remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

(1) 3 year property - 1 year.

(2) 5 year property - 2 years.

(3) 10 year property - 5 years.

(4) All 15 and 18 year property - 7 years.

When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to the limitations provided in this clause can be written off as provided in the preceding sentence.

After the full amount of the allowable deduction for that property under the provision of section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1984, has been obtained, the remaining depreciable basis in those assets for Minnesota purposes that shall be allowed as a depreciation allowance as provided above shall include the amount of any basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code, as amended through December 31, 1984, to reflect the investment tax credit. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

The provisions of section 168(i)(4) of the Internal Revenue Code of 1954, as amended through December 31, 1984 shall apply to restrict research credit carry-

backs and net operating loss carrybacks which are allocable to elected qualified leased property, notwithstanding section 290.068, subdivision 3, or 290.095, subdivision 3.

The provisions of section 280F of the Internal Revenue Code of 1954, as amended through May 25, 1985, shall apply to limit the depreciation deductions, (including the first year depreciation deduction provided in paragraph (B)), for luxury automobiles and other property as provided in that section, and provided that if that section applies, the taxpayer shall be allowed to deduct the same amount of depreciation as was deducted for federal income tax purposes.

(d) Paragraphs (2), (3), and (4) of clause (b) shall apply only in the case of property (other than intangible property) described in clause (a) with a useful life of three years or more.

(1) the construction, reconstruction, or erection of which is completed after December 31, 1958, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1958, or

(2) acquired after December 31, 1958, if the original use of such property commenced with the taxpayer and commences after such date.

(e) Where, under rules prescribed by the commissioner, the taxpayer and the commissioner have, after June 30, 1959, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the commissioner in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail is served by the party to the agreement initiating such change. This clause shall not apply with respect to recovery property as defined in clause (c).

(f) In the absence of an agreement under clause (e) containing a provision to the contrary, a taxpayer may at any time elect in accordance with rules prescribed by the commissioner to change from the method of depreciation prescribed in clause (b)(2) to the method described in clause (b)(1).

(g) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in this chapter for the purpose of determining the gain on the sale or other disposition of such property.

(B) First year depreciation. The term "reasonable allowance" as used in this subdivision may, at the election of the taxpayer, include an amount as provided under section 179 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subds 8 to 18, see M.S.1984]

Subd. 19. Organizational expenditures. The organizational and start up expenditures of a corporation may, at the election of the corporation be deducted in accordance with the provisions of sections 248 and 195 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subds 21 to 28, see M.S.1984]

Subd. 29. [Repealed, 1Sp1985 c 14 art 1 s 59]

[For text of subd 31, see M.S.1984]

History: 1985 c 210 art 1 s 9; 1Sp1985 c 14 art 1 s 35,36; art 21 s 13-15

290.091 ALTERNATIVE MINIMUM TAX ON PREFERENCE ITEMS.

Subdivision 1. **Imposition of tax.** In addition to all other taxes imposed by this chapter a tax is imposed on individuals, estates, and trusts equal to the excess (if any) of

- (a) an amount equal to four percent of alternative minimum taxable income after subtracting the exemption amount, over
- (b) the regular tax for the taxable year.

Subd. 2. **Definitions.** For purposes of the tax imposed by this section, the following terms have the meanings given:

(a) "Alternative minimum taxable income" means the sum of the following for the taxable year:

(1) the taxpayer's federal adjusted gross income as defined in the Internal Revenue Code;

(2) the taxpayer's federal tax preference items; less the sum of

(i) interest income as defined in section 290.01, subdivision 20b, clause (1); and

(ii) the amount of interest paid or accrued within the taxable year on indebtedness to the extent that the amount does not exceed qualified net investment income, as defined in section 55(e)(5) of the Internal Revenue Code. Interest does not include amounts deducted in computing federal adjusted gross income or amounts that are not allowable under section 55(e)(8) of the Internal Revenue Code.

In the case of an estate or trust, adjusted gross income must be modified as provided in section 55(e)(6)(B) of the Internal Revenue Code.

(b) "Federal tax preference items" means items as defined in sections 57, 58, and 443(d) of the Internal Revenue Code, modified as follows:

(1) The capital gain preference item shall be reduced where the gain would be modified because some or all of the assets have a higher basis for Minnesota purposes than for federal purposes.

(2) In the case of a nonresident individual, or an estate or trust, with a net operating loss that is a larger amount for Minnesota than for federal, the capital gain preference item shall be reduced to the extent it was reduced in the allowance of the net operating loss.

(3) Federal preference items from the business of mining or producing iron ore and other ores which are subject to the occupation tax and exempt from taxation under section 290.05, subdivision 1, shall not be a preference item for Minnesota.

(4) Other federal preference items to the extent not allowed in the computation of Minnesota gross income, as determined by the commissioner, are not preference items for Minnesota.

(c) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended through December 31, 1984.

(d) "Regular tax" means the tax that would be imposed under this chapter (without regard to this section), reduced by the sum of the nonrefundable credits allowed under this chapter.

Subd. 3. **Exemption amount.** For purposes of computing the alternative minimum tax, the exemption amount is:

(a) \$40,000 in the case of a married couple filing a joint return;

(b) \$30,000 in the case of an individual who is not married, as defined in section 143 of the Internal Revenue Code;

(c) \$20,000 in the case of

(1) an estate or trust or

(2) a married individual who files a separate tax return.

Subd. 4. Part year residents; estates and trusts. (a) An individual who is not a Minnesota resident for the entire year must compute his alternative minimum tax liability using a regular tax liability determined under section 290.06, subdivision 2c, paragraph (f), without regard to the provision for allocation to Minnesota. The resulting alternative minimum tax liability must be multiplied by the fraction defined in section 290.06, subdivision 2c, paragraph (f).

(b) In the case of an estate or trust, the alternative minimum tax liability must be computed by multiplying alternative minimum taxable income and the exemption amount by a fraction, the numerator of which is the amount of the taxpayer's alternative minimum taxable income allocated to this state pursuant to the provisions of sections 290.17 to 290.20, and the denominator of which is the taxpayer's total alternative minimum taxable income.

Subd. 5. Tax benefit rule. The tax benefit rule contained in section 58(h) of the Internal Revenue Code applies to the computation of the tax under this section only to the extent that it determines if there is an item of tax preference for purposes of subdivision 2, clause (a)(2).

History: *1Sp1985 c 14 art 1 s 37; 1Sp1985 c 16 art 2 s 28*

NOTE: This section was also amended by Laws 1985, First Special Session chapter 14, article 21, section 16 to read as follows:
 "290.091 Minimum tax on preference items.

In addition to all other taxes imposed by this chapter there is hereby imposed on individuals, estates, and trusts a tax which, in the case of a resident individual, shall be equal to 40 percent of the amount of the taxpayer's alternative minimum tax liability for tax preference items pursuant to the provisions of sections 55, 57, 58 and 443(d) of the Internal Revenue Code of 1954 as amended through December 31, 1984. For purposes of the tax imposed by this section, the following modifications shall be made:

(1) Alternative tax itemized deductions shall include the amount allowable as a deduction for the taxable year under section 164 of the Internal Revenue Code for Minnesota income tax paid or accrued.

(2) The capital gain preference item shall be reduced where the gain would be modified because some or all of the assets have a higher basis for Minnesota purposes than for federal purposes.

(3) In the case of a nonresident individual, or an estate or trust, with a net operating loss that is a larger amount for Minnesota than for federal, the capital gain preference item shall be reduced to the extent it was reduced in the allowance of the net operating loss.

(4) Federal preference items from the business of mining or producing iron ore and other ores which are subject to the occupation tax and exempt from taxation under section 290.05, subdivision 1, shall not be a preference item for Minnesota.

(5) The term "regular tax" as defined in section 55(f)(2) of the Internal Revenue Code shall be increased by the amount of the credit allowable under section 38 of the Internal Revenue Code and it shall be computed before the limitation on tax provided in section 1301 of the Internal Revenue Code.

(6) Federal preference items which arise from a farm shall not be a preference item to the extent they exceed the loss allowed under section 290.09, subdivision 29, other than interest and taxes.

In the case of any taxpayer who is not a full year resident individual, or who is an estate or trust the tax shall equal 40 percent of that federal liability, multiplied by a fraction the numerator of which is the amount of the taxpayer's preference item income allocated to this state pursuant to the provisions of sections 290.17 to 290.20, and the denominator of which is the taxpayer's total preference item income for federal purposes.

The tax benefit rule contained in section 58(h) of the Internal Revenue Code is applied to the Minnesota minimum tax only to the extent that it determines if there is a federal minimum tax. No separate tax benefit rule is allowable for the Minnesota minimum tax.

For property placed in service after December 31, 1980, and in a taxable year beginning before January 1, 1983, the preference items contained in section 57 (a)(12) of the Internal Revenue Code of 1954, as amended through December 31, 1983, shall not apply."

290.095 OPERATING LOSS DEDUCTION.

[For text of subs 1 to 5, see M.S.1984]

Subd. 7. Tentative carryback adjustments. (a) Application for adjustment. A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a loss or credit carryback from any taxable year. The application shall be signed and verified as provided in section 290.37, subdivision 1, and shall be filed on or after the date of filing of the return for the taxable year from which the carryback results and within a period of 12 months from the end of such taxable year (or with respect to any portion of a credit carryback from a taxable year attributable to a loss carryback from a subsequent taxable year, the application shall be filed within a period of 12 months from the end of the subsequent taxable year), in the manner and form required by rules prescribed by the

commissioner. The application shall set forth in such detail and with such supporting data and explanation as such rules shall require:

- (1) the amount of the loss or credit;
- (2) the amount of the tax previously determined for the prior taxable year affected by such carryback;
- (3) the amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;
- (4) the unpaid amount of such tax;
- (5) such other information for purposes of carrying out the provisions of this subdivision as may be required by such rules.

An application under this subdivision shall not constitute a claim for refund until 90 days from the date on which the application was filed, at which time it will become a claim for refund under the provisions of section 290.50.

(b) Allowance of adjustments. Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year from which such carryback results, whichever is the later, the commissioner shall make, to the extent he deems practicable in such period a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the commissioner may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of tax decreased and any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) The provisions of this subdivision shall apply to net operating loss carrybacks as provided in subdivision 3 or 11; capital loss carrybacks as provided in section 290.16, subdivision 6; research credit carrybacks as provided in section 290.068, subdivision 3; and to any other carrybacks which may be provided in this chapter.

[For text of subd 8, see M.S.1984]

Subd. 9. Special period of limitation with respect to net operating loss carrybacks. For the purposes of sections 290.46 and 290.50 if the claim for refund relates to an overpayment attributable to a net operating loss carryback under this section or as the result in the case of an individual of an adjustment of "federal adjusted gross income" because of the carryback under section 172 of the Internal Revenue Code of 1954, as amended through December 31, 1983 in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period shall be that period which ends with the expiration of the 15th day of the 46th month (or the 45th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback or adjustment of "federal adjusted gross income." During this extended period, for taxable years beginning before January 1, 1985, married individuals who elected to file separate returns or a combined return may change their election and file a joint return.

Subd. 10. Product liability loss carryback. In the case of a taxpayer which has a product liability loss, as defined in section 172(j) of the Internal Revenue Code

of 1954 as amended through December 31, 1983, for a taxable year (referred to as "loss year"), the product liability loss shall be a net operating loss carryback to each of the ten taxable years preceding the loss year.

Subd. 11. Carryback or carryover adjustments. (a) For individuals the amount of a net operating loss that may be carried back or carried over shall be the same dollar amount allowable in the determination of federal adjusted gross income. For estates and trusts the amount of a net operating loss that may be carried back or carried over shall be the same dollar amount allowable in the determination of federal taxable income.

(b) The following adjustments to the amount of the net operating loss that may be carried back or carried over must be made for:

(1) Nonassignable income or losses as required by section 290.17, subdivision 2.

(2) Adjustments to the determination of federal adjusted gross income that must be made because of changes in the Internal Revenue Code that have not yet been adopted by the legislature by updating the reference to the Internal Revenue Code contained in section 290.01, subdivision 20.

(3) Gains or losses which result from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes subject to the limitations contained in section 290.01, subdivision 20b, clauses (2) and (3).

(4) Interest, taxes, and other expenses not allowed under section 290.10, clause (9).

(5) The modification for accelerated cost recovery system depreciation as provided in section 290.01, subdivision 20f.

(c)(1) The net operating loss carryback or carryover applied as a deduction in the taxable year to which the net operating loss is carried back or carried over shall be equal to the net operating loss carryback or carryover applied in the taxable year in arriving at federal adjusted gross income (or federal taxable income for trusts and estates) subject to the modifications contained in clause (b) and to the following modifications:

(A) Increase the amount of carryback or carryover applied in the taxable year by the amount of losses and interest, taxes and other expenses not assignable or allowable to Minnesota incurred in the taxable year.

(B) Decrease the amount of carryback or carryover applied in the taxable year by the amount of income not assignable to Minnesota earned in the taxable year.

(C) A taxpayer who is not a resident of Minnesota during any part of the taxable year and who has no income assignable to Minnesota during the taxable year shall apply no net operating loss carryback or carryover in the taxable year.

(2) The provisions of section 172(b) of the Internal Revenue Code of 1954 as amended through December 31, 1983 (relating to carrybacks and carryovers) shall apply. The net operating loss carryback or carryover to the next consecutive taxable year shall be the net operating loss carryback or carryover as calculated in clause (c)(1) less the amount applied in the earlier taxable year(s). No additional net operating loss carryback or carryover shall be allowed if the entire amount has been used to offset Minnesota income in a year earlier than was possible on the federal return. A net operating loss carryback or carryover that was allowed to offset federal income in a year earlier than was possible on the Minnesota return shall still be allowed to offset Minnesota income but only if the loss was assignable to Minnesota in the year the loss occurred.

(d) A net operating loss shall be allowed to be carried back or carried forward only to the extent that loss was assignable to Minnesota in the year the loss occurred or in the year to which the loss was carried over, whichever would allow more of the loss to be allowed for Minnesota purposes.

History: 1985 c 210 art 2 s 3; 1Sp1985 c 14 art 1 s 38-40

290.10 NONDEDUCTIBLE ITEMS.

In computing the net income no deduction shall in any case be allowed for:

- (1) personal, living or family expenses;
- (2) amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except as otherwise provided in this chapter;
- (3) amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (4) premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;
- (5) the shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance;
- (6) losses from sales or exchanges of property, directly or indirectly, between related taxpayers as defined and as provided in section 267 of the Internal Revenue Code;
- (7) in computing net income, no deduction shall be allowed under section 290.09, subdivision 2, relating to expenses incurred or under section 290.09, subdivision 3, relating to interest accrued as provided in section 267 of the Internal Revenue Code;
- (8)(a) contributions by employees under the federal railroad retirement act and the federal social security act; (b) Payments to Minnesota or federal public employee retirement funds; (c) 60 percent of the amount of taxes imposed on self-employment income under section 1401 of the Internal Revenue Code. Effective for taxable years beginning after December 31, 1989, no deduction is allowed for self-employment taxes where the taxpayer claimed a deduction for those taxes under section 164(f) of the Internal Revenue Code;
- (9) expenses, interest and taxes connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this chapter, except that for persons engaged in the business of mining or producing iron ore, the mining of which is subject to the occupation tax imposed by section 298.01, subdivision 1, this shall not prevent a subtraction to the extent allowed under section 290.01, subdivision 20b, clause (10)(b), or the deduction by a corporate taxpayer of expenses and other items to the extent that the expenses and other items are allowable under section 290.09 and are not deductible, capitalizable, retainable in basis, or taken into account by allowance or otherwise in computing the occupation tax and do not exceed the amounts taken for federal income tax purposes for that year. Occupation taxes imposed under chapter 298, royalty taxes imposed under chapter 299, or depletion expenses may not be deducted under this clause;
- (10) in situations where this chapter provides for a subtraction from gross income of a specific dollar amount of an item of income assignable to this state, and within the measure of the tax imposed by this chapter, that portion of the federal income tax liability assessed upon such income subtracted, and any expenses attributable to earning such income, shall not be deductible in computing net income;

(11) amounts paid or accrued for such taxes and carrying charges as, under rules prescribed by the commissioner, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such rules, to treat such taxes or charges as so chargeable;

(12) no deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if the trade or business (or the activities which comprise the trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the federal Controlled Substances Act) which is prohibited by federal law or the law of Minnesota.

For purposes of this section, reference to the Internal Revenue Code means the Internal Revenue Code of 1954, as amended through December 31, 1984.

History: *1Sp1985 c 14 art 1 s 41*

NOTE: This section was also amended by Laws 1985, First Special Session chapter 14, article 21, section 17 to read as follows:
 "290.10 Nondeductible items.

In computing the net income no deduction shall in any case be allowed for:

- (1) personal, living or family expenses;
- (2) amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except as otherwise provided in this chapter;
- (3) amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (4) premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;
- (5) the shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance;
- (6) losses from sales or exchanges of property, directly or indirectly, between persons as defined and as provided in section 267 of the Internal Revenue Code of 1954, as amended through December 31, 1984;
- (7) in computing net income, no deduction shall be allowed under section 290.09, subdivision 2, relating to expenses incurred or under section 290.09, subdivision 3, relating to interest accrued as provided in section 267 of the Internal Revenue Code of 1954, as amended through December 31, 1984;
- (8)(a) contributions by employees under the federal railroad retirement act and the federal social security act; (b) payments to Minnesota or federal public employee retirement funds; (c) three-fourths (75 percent) of the amount of taxes imposed on self-employment income under section 1401 of the Internal Revenue Code of 1954, as amended through December 31, 1983, provided that effective for taxable years beginning after December 31, 1989, no deduction is allowed for self-employment taxes where the taxpayer claimed a deduction for those taxes under section 164(f) of the Internal Revenue Code of 1954, as amended through December 31, 1983;
- (9) expenses, interest and taxes connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this chapter;
- (10) in situations where this chapter provides for a subtraction from gross income of a specific dollar amount of an item of income assignable to this state, and within the measure of the tax imposed by this chapter, that portion of the federal income tax liability assessed upon such income subtracted, and any expenses attributable to earning such income, shall not be deductible in computing net income;
- (11) amounts paid or accrued for such taxes and carrying charges as, under rules prescribed by the commissioner, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such rules, to treat such taxes or charges as so chargeable;
- (12) no deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if the trade or business (or the activities which comprise the trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the federal Controlled Substances Act) which is prohibited by federal law or the law of Minnesota."

290.101 [Repealed, *1Sp1985 c 14 art 1 s 59*]

290.12 GAIN OR LOSS ON DISPOSITION OF PROPERTY, COMPUTATION.

[For text of subd 1, see M.S.1984]

Subd. 2. Adjustments. In computing the amount of gain or loss under subdivision 1 proper adjustment shall be made for any expenditure, receipt, loss, or other item properly chargeable to capital account by the taxpayer during his ownership thereof. The basis shall be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization, depletion, and the allowance for amortization of bond premium if an election to amortize was made in accordance with section 290.09, subdivision 13, which could, during the period of his ownership thereof, have been deducted by the taxpayer under this chapter in respect of such property. In addition, if the property was acquired before January 1, 1933, the basis, if other than the fair market value as of such date, shall be diminished by the

amount of exhaustion, wear and tear, obsolescence, amortization, or depletion actually sustained before such date. In respect of any period since December 31, 1932, during which property was held by a person or an organization not subject to income taxation under this chapter, proper adjustment shall be made for exhaustion, wear and tear, obsolescence, amortization, and depletion of such property to the extent sustained. For the purpose of determining the amount of these adjustments the taxpayer who sells or otherwise disposes of property acquired by gift shall be treated as the owner thereof from the time it was acquired by the last preceding owner who did not acquire it by gift, and the taxpayer who sells or otherwise disposes of property acquired by gift through an inter vivos transfer in trust shall be treated as the owner from the time it was acquired by the grantor.

No adjustment shall be made:

(1) for taxes or other carrying charges described in section 290.10, clause (11), or

(2) for expenditures described in section 290.09, subdivision 16 (relating to circulation expenditures), for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior years.

[For text of subds 3 and 4, see M.S.1984]

History: *1Sp1985 c 14 art 1 s 42*

290.13 GAIN OR LOSS ON DISPOSITION OF PROPERTY, RECOGNITION.

Subdivision 1. **Transactions in which no gain or loss is recognized.** Gain or loss from transactions described in section 1031, 1035, 1036, or 1042 of the Internal Revenue Code of 1954, as amended through December 31, 1984, shall be recognized at the time and in the manner, including the basis computation, provided in those sections.

[For text of subds 5 and 5a, see M.S.1984]

History: *1Sp1985 c 14 art 21 s 18*

290.131 DISTRIBUTIONS BY CORPORATIONS; EFFECTS ON RECIPIENTS.

Subdivision 1. **Distributions of property.** The effects on recipients of a distribution by a corporation shall be governed by the provisions of sections 301 to 307 of the Internal Revenue Code of 1954, as amended through December 31, 1984. However, in section 301(c)(3)(B) the date January 1, 1933 shall be substituted for March 1, 1913 when determining the amount of a distribution that is not taxable.

History: *1Sp1985 c 14 art 21 s 19*

290.132 DISTRIBUTIONS BY CORPORATIONS; EFFECTS ON CORPORATION.

Subdivision 1. **Taxability of corporation on distribution.** No gain or loss shall be recognized to a corporation on the distribution, with respect to its stock as provided in section 311 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

The effect on earnings and profits shall be determined according to the provisions of section 312 of the Internal Revenue Code of 1954, as amended through December 31, 1984. However, when determining earnings and profits in section

312(f) and (g), the date December 31, 1932 shall be substituted for February 28, 1913, and January 1, 1933 shall be substituted for March 1, 1913.

History: *1Sp1985 c 14 art 21 s 20*

290.133 DEFINITIONS, CONSTRUCTIVE OWNERSHIP OF STOCK.

Subdivision 1. **Dividend defined.** For purposes of this chapter, the definitions provided in sections 316 to 318 of the Internal Revenue Code of 1954, as amended through December 31, 1984, shall apply. However, in section 316 (a)(1), "December 31, 1932" shall be substituted for "February 28, 1913" when determining dividends.

History: *1Sp1985 c 14 art 21 s 21*

290.135 CORPORATE LIQUIDATIONS; EFFECTS ON CORPORATION.

Subdivision 1. **General rule.** Gain or loss shall be recognized to a corporation on the distribution of property in complete liquidation or on any distribution of an interest in a partnership as provided in sections 336 to 346 and 386 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

History: *1Sp1985 c 14 art 21 s 22*

290.136 CORPORATE ORGANIZATIONS AND REORGANIZATIONS.

Subdivision 1. **Transfer to corporation controlled by transferor.** The provisions of sections 351 to 368 of the Internal Revenue Code of 1954, as amended through December 31, 1984 shall apply to corporate organizations and reorganizations. However, in section 362, the phrase "acquired in a taxable year beginning after December 31, 1956" shall be substituted for "acquired on or after June 22, 1954" when determining the property to which this section applies.

History: *1Sp1985 c 14 art 21 s 23*

290.14 GAIN OR LOSS ON DISPOSITION OF PROPERTY, BASIS.

Except as otherwise provided in this chapter, the basis for determining the gain or loss from the sale or other disposition of property acquired on or after January 1, 1933, shall be the cost to the taxpayer of such property, with the following exceptions:

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

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

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

(4) Except as otherwise provided in this clause, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged or otherwise disposed of before the decedent's death by the person, be the fair market value of the property at the date of decedent's death or, in the case of an election under section 2032 (relating to

alternate valuation) of the Internal Revenue Code of 1954, as amended through December 31, 1983, its valuation at the applicable valuation date prescribed by that section, or in the case of an election under section 2032A (relating to valuation of farm real property) of the Internal Revenue Code of 1954, as amended through December 31, 1983, its value determined by that section.

For the purposes of the preceding paragraph, the following property shall be considered to have been acquired from or to have passed from the decedent:

(a) property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(b) property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(c) property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(d) property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(e) in the case of a decedent's dying after December 31, 1956, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or nonexercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate for Minnesota inheritance or estate tax purposes. In this case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under the first paragraph of this clause reduced by the amount allowed to the taxpayer as deductions in computing taxable net income under this chapter or prior Minnesota income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on the property before the death of the decedent. The basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to annuities and property described in paragraphs (a), (b), (c) and (d) of this clause.

This clause shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 290.077.

(5) If substantially identical property was acquired in the place of stocks or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under section 290.089 or 290.09, subdivision 5, the basis in the case of property so acquired shall be the same as that provided in section 1091 of the Internal Revenue Code of 1954, as amended through December 31, 1983.

(6) Neither the basis nor the adjusted basis of any portion of real property shall, in the case of a lessor of the property, be increased or diminished on account of income derived by the lessor in respect of the property and excludable from gross income under section 290.08, subdivision 14.

If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of the property was included in gross income of the lessor for any taxable year beginning before January 1, 1943, the basis of each portion of the property shall be properly adjusted for the amount included in gross income.

(7) The basis of property subject to the provisions of section 1034 of the Internal Revenue Code of 1954, as amended through December 31, 1983 (relating to the rollover of gain on sale of principal residence) shall be the same as the basis for federal income tax purposes. The basis shall be increased by the amount of gain

realized on the sale of a principal residence outside of Minnesota, while a nonresident of this state, which gain was not recognized because of the provisions of section 1034.

History: *1Sp1985 c 14 art 1 s 43*

290.16 DEPRECIATION, BASIS; GAIN OR LOSS ON DISPOSITION OF PROPERTY, HOW TAKEN INTO ACCOUNT IN COMPUTING NET INCOME.

[For text of subds 1 and 1a, see M.S.1984]

Subd. 3. Definitions. As used in this section:

(1) The term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include

(a) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(b) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, or real property used in the trade or business of the taxpayer, or

(c) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in subparagraph (a);

(2) The term "short-term capital gain" means gain from the sale or exchange of a short-term capital asset, if and to the extent such gain is taken into account in computing gross income;

(3) The term "short-term capital loss" means loss from the sale or exchange of a short-term capital asset, if and to the extent such loss is taken into account in computing net income;

(4) The term "long-term capital gain" means gain from the sale or exchange of a long-term capital asset, if and to the extent such gain is taken into account in computing gross income;

(5) The term "long-term capital loss" means loss from the sale or exchange of a long-term capital asset, if and to the extent such loss is taken into account in computing net income;

(6) The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year;

(7) The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

(8) The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

(9) The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(10) The term "net capital gain" means the excess of the gains from the sales or exchanges of capital assets over the losses from such sales or exchanges.

(11) The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under subdivision 5. For the purpose of determining losses under this paragraph, amounts which are short-term capital losses under subdivision 6 shall be excluded.

(12) The term "short-term capital asset" means a capital asset held for not more than six months, or, if the asset is acquired after December 31, 1987, one year.

(13) The term "long-term capital asset" means a capital asset held for more than six months, or, if the asset is acquired after December 31, 1987, one year.

[For text of subds 4 to 6, see M.S.1984]

Subd. 7. Bonds, other evidences of indebtedness. For the purpose of this section, the treatment of bonds and other debt instruments shall be governed by the provisions of sections 1271 to 1288 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subd 8, see M.S.1984]

Subd. 9. Property used in trade or business. (1) For the purposes of this subdivision, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, held for more than six months, or, if the asset is acquired after December 31, 1987, one year, and real property used in the trade or business, held for more than six months, or, if the asset is acquired after December 31, 1987, one year, which is not (A) property of a kind which would properly be includable in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Such term also includes livestock, regardless of age, held by the taxpayer for draft, breeding or dairy purposes, and held by him for 12 months or more from the date of acquisition. Such term does not include poultry.

(2) If, during the taxable year, the recognized gains upon sale or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and long-term capital assets into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of long-term capital assets. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains and losses described therein shall be included only if and to the extent taken into account in computing net income, except that subdivisions 4 and 5 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or long-term capital assets shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this clause but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or as any long-term capital asset, this clause shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than the adjusted basis without regard to the provisions of section 168 of the Internal Revenue Code of 1954, as in effect before its repeal by the

Tax Reform Act of 1976, shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in this subdivision.

Net ordinary losses shall be recaptured as provided in section 1231(c) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subds 10 and 12, see M.S.1984]

Subd. 13. Options to buy or sell; treatment of gain or loss. Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise an option to buy or sell property shall be considered gain or loss as provided in section 1234 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subd 14, see M.S.1984]

Subd. 15. Gain from dispositions of certain depreciable property. For purposes of this subdivision "depreciable property" shall mean "Section 1245 property" or "Section 1245 recovery property" as those phrases are defined in section 1245(a) (3) or (5) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable property" shall be treated in the same manner as is provided by section 1245 of the Internal Revenue Code of 1954, as amended through December 31, 1984 and regulations adopted pursuant thereto except that the determination shall be made using the basis computed under this chapter.

Subd. 16. Gain from disposition of certain depreciable realty. For purposes of this subdivision "depreciable realty" shall mean "Section 1250 realty" as that phrase is defined in section 1250(c) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable realty" shall be treated in the same manner as is provided by sections 1250 and 291 of the Internal Revenue Code of 1954, as amended through December 31, 1984, and rules adopted pursuant thereto except that the determination shall be made using the basis computed under this chapter.

Subd. 17. Straddles. Gain or loss in the case of straddles shall be recognized as provided in sections 1092, 1234A, and 1256 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

History: 1Sp1985 c 14 art 21 s 24-30

290.17 GROSS INCOME, ALLOCATION TO STATE.

[For text of subds 1 and 1a, see M.S.1984]

Subd. 2. Other taxpayers. In the case of an individual who is not a full year resident, this subdivision applies to determine what income is assignable to Minnesota for purposes of determining the numerator of the fraction used in section 290.06, subdivision 2c. In the case of taxpayers not subject to the provisions of subdivision 1, items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(1)(a) The entire income of all resident or domestic taxpayers from compensation for labor or personal services, or from a business consisting principally of the performance of personal or professional services, shall be assigned to this state, and the income of nonresident taxpayers from such sources shall be assigned to this state

if, and to the extent that, the labor or services are performed within it; all other income from such sources shall be treated as income from sources without this state.

(b) In the case of an individual who is a nonresident of Minnesota and who is an athlete or entertainer, income from compensation for labor or personal services performed within this state shall be determined in the following manner.

(i) The amount of income to be assigned to Minnesota for an individual who is a nonresident salaried athletic team employee shall be determined by using a fraction in which the denominator contains the total number of days in which the individual is under a duty to perform for the employer, and the numerator is the total number of those days spent in Minnesota. In order to eliminate the need to file state or provincial income tax returns in several states or provinces, Minnesota will exclude from income any income assigned to Minnesota under the provisions of this clause for a nonresident athlete who is employed by an athletic team whose operations are not based in this state if the state or province in which the athletic team is based provides a similar income exclusion. If the state or province in which the athletic team's operations are based does not have an income tax on an individual's personal service income, it will be deemed that that state or province has a similar income exclusion. As used in the preceding sentence, the term "province" means a province of Canada.

(ii) The amount of income to be assigned to Minnesota for an individual who is a nonresident, and who is an athlete not listed in clause (i), or who is an entertainer, for that person's athletic or entertainment performance in Minnesota shall be determined by assigning to this state all income from performances or athletic contests in this state.

(2) Income from the operation of a farm shall be assigned to this state if the farm is located within this state and to other states only if the farm is not located in this state. Income from winnings on Minnesota pari-mutuel betting tickets shall be assigned to this state. Income and gains received from tangible property not employed in the business of the recipient of such income or gains, and from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, shall be assigned to this state if such property has a situs within it, and to other states only if it has no situs in this state. Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held, whether in trust, or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state or is a resident trust or estate.

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

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

apply to business income subject to the provisions of clause (1), nor shall it apply to income from the operation of a farm which is subject to the provisions of clause (2). For the purposes of this clause, a trade or business located in Minnesota is carried on partly within and partly without this state if tangible personal property is sold by such trade or business and delivered or shipped to a purchaser located outside the state of Minnesota.

If the trade or business carried on wholly or partly in Minnesota is part of a unitary business, the entire income of that unitary business shall be subject to apportionment under section 290.19 except for business income subject to the provisions of clause (1) and farm income subject to the provisions of clause (2). The term "unitary business" shall mean business activities or operations which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group. Unity shall be presumed whenever there is unity of ownership, operation, and use, evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction but the absence of these centralized activities will not necessarily evidence a nonunitary business. Unity of ownership will not be deemed to exist when a corporation is involved unless that corporation is a member of a group of two or more corporations more than 50 percent of the voting stock of each member of the group is directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, or by one or more of the member corporations of the group.

The entire income of a unitary business shall be subject to apportionment as provided in section 290.19. None of the income of a unitary business shall be considered as derived from any particular source and none shall be allocated to any particular place except as provided by the applicable apportionment formula.

In determining whether or not intangible property is employed in a unitary business carried on partly within and partly without this state so that income derived therefrom is subject to apportionment under section 290.19 the following rules and guidelines shall apply.

(a) Intangible property is employed in a business if the business entity owning intangible property holds it as a means of furthering the business operation of which a part is located within the territorial confines of this state.

(b) Where a business operation conducted in Minnesota, is owned by a business entity which carries on business activity outside of the state different in kind from that conducted within this state, and such other business is conducted entirely outside the state, it will be presumed that the two business operations are unitary in nature, interrelated, connected and interdependent unless it can be shown to the contrary.

(5) For purposes of this section, amounts received by a nonresident from the United States, its agencies or instrumentalities, the Federal Reserve Bank, the state of Minnesota or any of its political or governmental subdivisions, or a Minnesota volunteer fireman's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 408, or 409 of the Internal Revenue Code of 1954, as amended through December 31, 1984, are not considered income derived from carrying on a trade or business or from performing personal or professional services in Minnesota, and are not taxable under this chapter.

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

History: *1Sp1985 c 14 art 21 s 31*

290.172 COMMISSIONER OF REVENUE.

The commissioner of revenue shall represent the state of Minnesota on the multistate tax commission. The commissioner may be represented on the commission by an alternate designated by him. The alternate shall be an employee of the department of revenue.

History: 1985 c 210 art 2 s 5

290.18 TAXABLE NET INCOME, ADJUSTED GROSS INCOME; COMPUTATION.

[For text of subd 1, see M.S.1984]

Subd. 2. Federal income tax payments and refunds. In the case of individuals, estates, or trusts electing to deduct federal income taxes under section 290.088, the net income shall be computed by deducting from the gross income assignable to this state under section 290.17, first the deductions allowed under section 290.089, and second the deduction for allowable federal income taxes determined under the provisions of this section and section 290.10, clause (8), (9) or (10). For purposes of the preceding sentence, federal income tax shall include the foreign tax credit allowed under section 27 of the Internal Revenue Code of 1954, as amended through December 31, 1984, reduced by the amount of any foreign tax credit allowed for taxes payable to a province or territory of Canada for which a credit is allowed under section 290.081.

This deduction shall be allowed to individuals, estates, or trusts (i) for taxable years beginning after December 31, 1980 in the taxable year to which the liability applies. Such liability includes the portion of self-employment tax allowed under section 290.10, clause (8). The self-employment tax must be deducted by the person who is deriving the income.

(ii) Taxes paid for a taxable year beginning before January 1, 1981 shall be allowed as follows:

(1) Those taxes paid in a taxable year beginning before January 1, 1981, shall be claimed in the year in which the payment was made.

(2) Those paid in a taxable year beginning after December 31, 1980 but before January 1, 1983 shall be divided and deducted in equal installments reflected by the yearly periods beginning with the first day of the taxable year in which the payment was made and ending December 31, 1986.

(3) Those paid in a taxable year beginning after December 31, 1982 shall be claimed in the year in which the payment was made. This amount shall be allocated for exempt income under the provisions of section 290.10, clause (9) or (10) as though the payment was part of the federal tax liability for the year in which the payment was made.

(4) In the case of a person who was self-employed during all or a portion of the taxable year, the federal income tax liability for purposes of this clause shall be increased by the self-employment tax allowed under section 290.10, clause (8). The self-employment tax shall be deducted in the year paid as provided in paragraph (1), (2), or (3). Self-employment tax paid in a taxable year beginning after December 31, 1982 shall be allocated for exempt income as provided in paragraph (3).

(iii) If a taxpayer's federal tax liability is eventually not paid by reason of compromise, discharge, or court order, the deduction allowed pursuant to this subdivision shall be disallowed for the taxable year in which the liability was accrued.

(iv) In the event a federal tax liability for a taxable year commencing after December 31, 1980 is increased, decreased or modified, and such increase, decrease or modification has resulted in a change in the amount of Minnesota income tax in the year to which such increase, decrease or modification is attributable, the taxpayer's deduction under this subdivision shall be modified for such year.

(v) If the readjustments required in (iii) or (iv) are for taxes reflected in the transition rule described in (ii)(2), the readjustment shall be made equally to the remaining installments and if a reduction to such installments is required under this readjustment which exceeds the total of all remaining installments, the remaining installments will be reduced to zero and the excess included in income as a federal income tax refund.

(vi) Refunds which are not involved with any readjustments under the transition rule shall be included in income under Minnesota Statutes 1982, section 290.01, subdivision 20a, clause (6) if it is from a year beginning before January 1, 1981.

(vii) Refunds of taxes for years beginning after December 31, 1980, shall be used to adjust the deduction in the taxable year of the liability unless that year is closed by statute and no other adjustments are to be required or allowable in which case such refund shall be reportable in the year received.

[For text of subd 3, see M.S.1984]

Subd. 4. [Repealed, 1Sp1985 c 14 art 1 s 59]

History: 1985 c 210 art 1 s 10; 1Sp1985 c 14 art 1 s 44

290.19 NET INCOME; ALLOCATION TO STATE, METHODS.

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

(1) If the business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores, or of the manufacture of personal property and the sale of said property within and without the state, the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state is of the total sales wherever made;

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

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

(d) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage

determined under clause (1) (a), 15 percent of the percentage determined under clause (1) (b), and 15 percent of the percentage determined under clause (1) (c);

(2) (a) In all other cases the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(1) The percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted;

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

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

(4) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (2) (a) (1), 15 percent of the percentage determined under clause (2) (a) (2), and 15 percent of the percentage determined under clause (2) (a) (3);

(b) If the methods prescribed under clause (2) (a) will not properly reflect taxable net income assignable to the state, there may be used, if practicable and if such use will properly and fairly reflect such income, the percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted; or the separate or segregated accounting method; however, for athletic teams when the visiting team does not share in the gate receipts, all of the team's income is apportioned to the state in which the team's operation is based;

(3) If the business consists exclusively of the selling of tangible personal property and services in response to orders received by United States mail or telephone, and 100 percent of the taxpayer's property and payroll is within Minnesota, then the taxpayer may apportion net income to Minnesota as provided in clause (1) or (2), except that the percentage applicable in clause (1)(d) or (2)(a)(4) shall be 100 percent of the percentage determined under clause (1)(a) or (2)(a)(1). In determining eligibility for this paragraph, the sale not in the ordinary course of business of tangible or intangible assets used in conducting business activities shall be disregarded.

(4) The sales, payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or rented and used by the taxpayer during the taxable year in respect of which the tax is being computed. For purposes of computing the property factor referred to in this section, United States government property which is used by the taxpayer shall be considered as being owned by the taxpayer.

[For text of subds 1a to 3, see M.S.1984]

History: *1Sp1985 c 14 art 1 s 45*

NOTE: Subdivision 1, as amended by Laws 1985, First Special Session chapter 14, article 1, section 45 is effective for taxable years beginning after December 31, 1984 and before January 1, 1989. See Laws 1985, First Special Session chapter 14, article 1, section 61.

290.21 DEDUCTIONS ALLOWED TO CORPORATIONS.

[For text of subds 1 and 3, see M.S.1984]

Subd. 4. (a) 85 percent of dividends received by a corporation during the taxable year from another corporation, when the corporate stock with respect to which dividends are paid does not constitute the stock in trade of the taxpayer or would not be included in the inventory of the taxpayer, or does not constitute property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or when the trade or business of the taxpayer does not consist principally of the holding of the stocks and the collection of the income and gains therefrom. The remaining 15 percent shall be allowed if the recipient owns 80 percent or more of all the voting stock of the other corporation.

(b) If the trade or business of the taxpayer consists principally of the holding of the stocks and the collection of the income and gains therefrom, dividends received by a corporation during the taxable year from another corporation, if the recipient owns 80 percent or more of all the voting stock of the other corporation.

(c) The dividend deduction provided in this subdivision shall be allowed only with respect to dividends that are included in a corporation's Minnesota taxable net income for the taxable year.

The dividend deduction provided in this subdivision does not apply to a dividend from a corporation which, for the taxable year of the corporation in which the distribution is made or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

The dividend deduction provided in this subdivision applies to the amount of regulated investment company dividends only to the extent determined under section 854(b) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

The dividend deduction provided in this subdivision shall not be allowed with respect to any dividend for which a deduction is not allowed under the provisions of section 246(c) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

(d) If dividends received by a corporation that does not have nexus with Minnesota under the provisions of Public Law Number 86-272 are included as income on the return of an affiliated corporation permitted or required to file a combined report under section 290.34, subdivision 2, then for purposes of this subdivision the determination as to whether the trade or business of the corporation consists principally of the holding of stocks and the collection of income and gains therefrom shall be made with reference to the trade or business of the affiliated corporation having a nexus with Minnesota.

(e) Dividends received by a corporation from another corporation which is organized under the laws of a foreign country or a political subdivision of a foreign country, if the dividends are paid from income arising from sources without the United States, the commonwealth of Puerto Rico, and the possessions of the United States. The deduction provided by this clause does not apply if the corporate stock with respect to which dividends are paid constitutes the stock in trade of the taxpayer, or would be included in the inventory of the taxpayer, or constitutes property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business, or if the trade or business of the taxpayer consists principally of the holding of stocks and the collection of the income or gains

therefrom. No dividend may be deducted under this clause if it is deducted under clause (a).

[For text of subds 5 and 6, see M.S.1984]

Subd. 8. **Foreign source royalties.** (a) Rentals, fees, and royalties accrued or received from a foreign corporation for the use of or for the privilege of using outside of the United States patents, copyrights, secret processes and formulas, good will, know-how, trademarks, trade brands, franchises, and other like property. Rentals, fees, or royalties deducted under this subdivision shall not be included in the taxpayer's apportionment factors under section 290.19, subdivision 1, clause (1)(a) or (2)(a)(1). The preceding sentence shall not be construed to imply that nondeductible rentals, fees, and royalties from such properties are or were included in or excluded from the apportionment factors under any other provision of law.

(b) A corporation is allowed the deduction provided by this subdivision only if during the taxable year it received or accrued at least 80 percent of its gross income from sources as defined in clause (a) and from dividends received from foreign corporations. A corporation's gross income for purposes of paragraphs (b) and (c) shall be computed without regard to the requirement of section 290.34, subdivision 2, that a combined report be filed reflecting the entire income of the unitary business.

(c) For purposes of this subdivision, a foreign corporation is (i) a corporation organized under the laws of a foreign country or the political subdivision of a foreign country or (ii) a corporation which for the taxable year derives at least 80 percent of its gross income from sources without the United States, the commonwealth of Puerto Rico, and the possessions of the United States. A foreign corporation does not include a DISC as defined in section 992(a) of the Internal Revenue Code of 1954, as amended through December 31, 1983.

(d) The deduction provided in this subdivision is allowed only with respect to rentals, fees, and royalties that are included in a corporation's Minnesota taxable net income for the taxable year.

History: 1Sp1985 c 14 art 1 s 46; art 21 s 32

290.23 ESTATES AND TRUSTS; COMPUTATION OF NET INCOME, CREDITS; DEDUCTIONS.

[For text of subds 3 and 4, see M.S.1984]

Subd. 5. **Distributable net income, income, beneficiary; defined.** (1) For purposes of sections 290.22 through 290.25, the term "distributable net income" means the same as that term is defined in section 643(a) of the Internal Revenue Code of 1954, as amended through December 31, 1983 with the following modification:

There shall be included any tax-exempt interest to which section 290.01, subdivision 20b, clause (1) applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 290.10(9) (relating to disallowance of certain deductions).

If the estate or trust is allowed a deduction under section 642(c) of the Internal Revenue Code of 1954, as amended through December 31, 1983, the amount of the modification shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in that section of the Internal Revenue Code is deemed to consist of items specified in the modification. For this purpose, such amount shall (in the absence of specific provisions in the

governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(2) The term "income," and the term "beneficiary" have the same meaning as those terms are defined in section 643(b) and (c) of the Internal Revenue Code of 1954, as amended through December 31, 1983. The treatment of property distributed in kind and of multiple trusts shall be the same as provided in section 643 of the Internal Revenue Code of 1954, as amended through December 31, 1984.

[For text of subds 9 and 15, see M.S.1984]

History: *1Sp1985 c 14 art 21 s 33*

290.26 EMPLOYEES' TRUST, ANNUITY PLANS.

Subd. 2. Employer contributions. Contributions of an employer, including dividends, to an employee's trust, annuity plan, an employee's stock ownership trust and compensation under a deferred-payment plan, a simplified employee pension, or to a welfare benefit fund shall be allowed as a deduction in accordance with the provisions of section 404, 408(k), or 419 of the Internal Revenue Code of 1954, as amended through December 31, 1984 as adapted to the provisions of this chapter under rules issued by the commissioner of revenue.

[For text of subd 6, see M.S.1984]

History: *1Sp1985 c 14 art 21 s 34*

290.31 PARTNERSHIPS; INDIVIDUAL LIABILITY OF PARTNERS.

[For text of subd 1, see M.S.1984]

Subd. 2. Income and credits of partner. (1) In determining his income tax, each partner shall take into account separately his distributive share of the partnership's

(a) gains and losses from sales or exchanges of short-term capital assets as defined in section 290.16, subdivision 3,

(b) gains and losses from sales or exchanges of long-term capital assets as defined in section 290.16, subdivision 3,

(c) gains and losses from sales or exchanges of property described in section 1231 of the Internal Revenue Code of 1954, as amended through December 31, 1984 (relating to certain property used in a trade or business and involuntary conversions),

(d) charitable contributions as defined in section 170(c) of the Internal Revenue Code of 1954, as amended through December 31, 1984,

(e) dividends with respect to which there is provided an exclusion under section 116 or a deduction under sections 241 to 247 of the Internal Revenue Code of 1954, as amended through December 31, 1984,

(f) other items of income, gain, loss, deduction, or credit, to the extent provided by rules prescribed by the commissioner, and

(g) taxable net income or loss, exclusive of items requiring separate computation under other subparagraphs of this paragraph (1).

(2) The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (a) through (f) of paragraph (1) shall be determined as if such item were realized directly from the

source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(3) In any case where it is necessary to determine the gross income of a partner for purposes of this chapter, such amount shall include his distributive share of the gross income of the partnership.

[For text of subd 3, see M.S.1984]

Subd. 4. Partner's distributive share. The provisions of sections 704, 706 to 741, and 743 to 761 of the Internal Revenue Code of 1954, as amended through December 31, 1984, shall apply to partners and partnerships.

Subd. 5. Determination of basis of partner's interest. The adjusted basis of a partner's interest in a partnership shall, except as provided in the last paragraph of this subdivision, be the basis of such interest determined under section 722 or 742 of the Internal Revenue Code of 1954, as amended through December 31, 1984, relating to contributions to a partnership or transfers of partnership interests

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of

(a) net income of the partnership as determined under subdivision 3(1) and (2),

(b) income of the partnership exempt from tax under this chapter,

(c) the excess of the deductions for depletion over the basis of the property subject to depletion, and

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 of the Internal Revenue Code of 1954, as amended through December 31, 1984, and by the sum of his distributive share for the taxable year and prior taxable years of

(a) losses of the partnership, and

(b) expenditures of the partnership not deductible in computing its taxable net income and not properly chargeable to capital account, and

(3) decreased, but not below zero, by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent the deduction does not exceed the proportionate share of the adjusted basis of the property allocated to the partner under section 613A(c)(7)(D) of the Internal Revenue Code of 1954, as amended through December 31, 1984. For corporate partners, the deduction for depletion with respect to oil and gas wells shall be computed as provided in section 290.09, subdivision 8.

The commissioner shall prescribe by rule the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

[For text of subds 19 and 27, see M.S.1984]

History: 1Sp1985 c 14 art 21 s 35-37

290.37 FILING REQUIREMENTS.

Subdivision 1. Persons making returns. (a) The commissioner of revenue shall annually determine the gross income levels at which individuals, trusts, and estates shall be required to file a return for each taxable year. An individual who is not a Minnesota resident for any part of the year is not required to file a Minnesota income tax return if the individual's Minnesota gross income computed under section 290.06, subdivision 2c, clause (f)(1) is less than the filing requirements for an

individual who is a full year resident of Minnesota with the same marital status and number of personal credits.

The decedent's final income tax return, and all other income tax returns for prior years where the decedent had gross income in excess of the minimum amount at which an individual is required to file and did not file, shall be filed by his or her personal representative, if any. If there is no personal representative, the return or returns shall be filed by the transferees as defined in section 290.29, subdivision 3, who receive any property of the decedent.

The trustee or other fiduciary of property held in trust shall file a return with respect to the taxable net income of such trust if that exceeds an amount determined by the commissioner if such trust belongs to the class of taxable persons.

Every corporation shall file a return. The commissioner may adopt rules for the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined report if the affiliated group includes a corporation subject to tax under section 290.361. The return in the case of a corporation shall be signed by a person designated by the corporation.

The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer shall file a return with respect to the taxable net income of such taxpayer if a return is required.

(b) Such return shall (1) contain a written declaration that it is correct and complete, and (2) shall contain language prescribed by the commissioner providing a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

(c) For purposes of this subdivision the term "gross income" shall mean gross income as defined in section 61 of the Internal Revenue Code of 1954, as amended through December 31, 1983, modified and adjusted in accordance with the provisions of sections 290.01, subdivision 20b, clauses (1), (6), (7), and (8), 290.08, and 290.17.

[For text of subds 2 to 4, see M.S.1984]

History: *1Sp1985 c 14 art 1 s 47*

290.38 RETURNS OF MARRIED PERSONS.

A husband and wife must file a joint Minnesota income tax return if they filed a joint federal income tax return. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. If the husband and wife have elected to file separate federal income tax returns they must file separate Minnesota income tax returns. This election to file a joint or separate returns must be changed if they change their election for federal purposes. In the event taxpayers desire to change their election, such change shall be done in the manner and on such form as the commissioner shall prescribe by rule.

The determination of whether an individual is married is made as of the close of that person's taxable year; except that if that person's spouse dies during the taxable year the determination is made as of the time of the death. An individual who is legally separated from a spouse under a decree of divorce, dissolution, or of separate maintenance is not considered to be married.

In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by the personal representative of his estate; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if (a) no return for the taxable year has been made by the decedent, (b) no personal

representative has been appointed, and (c) no personal representative is appointed before the last day prescribed by law for filing the return of the surviving spouse. If a personal representative of the estate of the decedent is appointed after the joint return has been filed by the surviving spouse, the personal representative may disaffirm such joint return by filing, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return provided that the election has been also disaffirmed for federal purposes.

History: *1Sp1985 c 14 art 1 s 48*

290.39 RETURN; FORM AND FILING.

[For text of subds 1 and 1a, see M.S.1984]

Subd. 2. [Repealed, 1Sp1985 c 14 art 1 s 59]

[For text of subd 3, see M.S.1984]

290.391 AMENDED RETURNS.

Any taxpayer who finds that his income tax return as originally filed is in error may correct such error by filing an amended return. An amended return must be in the form the commissioner prescribes. If the tax shown due on the amended return is less than the tax shown due on the original return, the amended return constitutes a claim for refund pursuant to section 290.50. The time limitations contained in sections 290.49 and 290.50 apply to filing of an amended return. The filing of the original return starts the running of the statute of limitations provided in section 290.49.

History: *1985 c 229 s 2*

290.41 INFORMATION RETURNS.

Subdivision 1. Partnerships, fiduciaries, and S corporations. (a) Partnerships shall make a return for each taxable year which shall conform to the requirements of section 290.31, and shall, in addition, include the names and addresses of all partners entitled to a distributive share in their taxable net income and the amount of such distributive share to which each is entitled. The return shall contain or be verified by a written declaration that it is made under the penalties of criminal liability for willfully making a false return. Each partnership required to file a return for any partnership taxable year shall, on or before the day on which the return for the taxable year was filed, furnish to each person who is a partner at any time during the taxable year a copy of the information shown on the return as may be required.

(b) The fiduciary of any estate or trust making the return required to be filed under this chapter for any taxable year shall, on or before the date on which the return was filed, furnish to each beneficiary who receives a distribution from the estate or trust with respect to the taxable year or to whom any item with respect to the taxable year is allocated, a statement containing the information shown on the return as the commissioner may require.

(c) Each S corporation required to file a return under section 290.974 for any taxable year shall, on or before the day on which the return for the taxable year was filed, furnish to each person who is a shareholder at any time during the taxable year a copy of the information shown on the return.

(d) The statements required to be given to the partners, beneficiaries, or shareholders by this subdivision must be furnished at the time required by this subdivision, notwithstanding section 290.42, clause (7).

Subd. 2. By persons, corporations, cooperatives, governmental entities or school districts. Every person, corporation, or cooperative, the state of Minnesota and its political subdivisions, and every city, county and school district in Minnesota, making payments in the regular course of a trade or business during the taxable year to any person or corporation of \$600 or more on account of rents or royalties, or of \$10 or more on account of interest, or \$10 or more on account of dividends or patronage dividends, or \$600 or more on account of either wages, salaries, commissions, fees, prizes, awards, pensions, annuities, or any other fixed or determinable gains, profits or income, not otherwise reportable under section 290.92, subdivision 7, or on account of earnings of \$10 or more distributed to its members by savings, building and loan associations or credit unions chartered under the laws of this state or the United States, (a) shall make a return (except in cases where a valid agreement to participate in the combined federal and state information reporting system has been entered into, and such return is therefore filed only with the commissioner of internal revenue pursuant to the applicable filing and informational reporting requirements of the Internal Revenue Code of 1954 as amended through December 31, 1983) in respect to such payments in excess of the amounts specified, giving the names and addresses of the persons to whom such payments were made, the amounts paid to each, and (b) shall make a return in respect to the total number of such payments and total amount of such payments, for each category of income specified, which were in excess of the amounts specified. This subdivision shall not apply to the payment of interest or dividends to a person who was a nonresident of Minnesota for the entire year.

A person, corporation, or cooperative required to file returns under this subdivision on interest, dividends, or patronage dividend payments with respect to more than 50 payees for any calendar year must file all of these returns on magnetic media unless the person establishes to the satisfaction of the commissioner that compliance with this requirement would be an undue hardship.

[For text of subds 3 and 4, see M.S.1984]

Subd. 5. [Repealed, 1Sp1985 c 14 art 1 s 59]

[For text of subds 6 to 10, see M.S.1984]

Subd. 11. By trustees. The trustee of an individual retirement account and the issuer of an endowment contract or an individual retirement annuity who is required to make a report under the provisions of section 408(i) of the Internal Revenue Code of 1954, as amended through December 31, 1984, shall file with the commissioner a copy of that report containing the information required under that subsection. The provisions of that subsection shall govern the time the reports are to be filed and the requirements of a statement that must be furnished to persons with respect to whom information is required to be furnished, notwithstanding section 290.42, clause (7).

History: 1Sp1985 c 14 art 1 s 49; art 21 s 38,39

290.42 FILING RETURNS, DATE.

The returns required to be made under sections 290.37 to 290.39 and 290.41, other than those under section 290.41, subdivisions 3 and 4, which shall be made within 30 days after demand therefor by the commissioner, shall be filed at the following times:

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

(2) Returns made on the basis of the fiscal year shall be filed on the fifteenth day of the fourth month following the close of such fiscal year, except that returns of corporations shall be filed on the fifteenth day of the third month following the close of the fiscal year;

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

(4) Other returns for a fractional part of a year shall be filed on the fifteenth day of the fourth month following the end of the month in which falls the last day of the period for which the return is made, except that such returns of corporations shall be filed on the fifteenth day of the third month following the end of the month in which falls the last day of the period for which the return is made:

In the case of a final return of a decedent for a fractional part of a year, such return shall be filed on the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of a year.

(4a) In the case of the return of a cooperative association such returns shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

(5) If the due date for any return required under this chapter falls upon:

A Saturday, Sunday, or a legal holiday such return filed by the next succeeding day which is not a Saturday, Sunday, or legal holiday shall be considered to be timely filed. The term "legal holiday" means any day made a holiday in Minnesota by section 645.44, subdivision 5 or by the laws of the United States.

(6) In case of sickness, absence, or other disability, or when, in his judgment, good cause exists, the commissioner may extend the time for filing these returns for not more than six months, except as provided for corporations and except that where the failure is due to absence outside the United States he may extend the period as provided in section 6081 of the Internal Revenue Code of 1954, as amended through December 31, 1983. He may require each taxpayer in any of such cases to file a tentative return at the time fixed for filing the regularly required return from him, and to pay a tax on the basis of such tentative return at the times required for the payment of taxes on the basis of the regularly required return from such taxpayer. The commissioner may grant an extension of up to seven months for filing the return of a corporation subject to tax under this chapter if the corporation files a tentative return at the time fixed for filing the regularly required return and pays the tax on the basis of the tentative return in accordance with this section and section 290.45.

(7) Every person making a return under section 290.41 (except subdivisions 3 and 4) shall furnish to each person whose name is set forth in the return a written statement showing

(A) the name and address of the person making the return, and

(B) the aggregate amount of payments to the person shown on the return.

This written statement shall be furnished to the person on or before January 31 of the year following the calendar year for which the return was made. A duplicate

of this written statement shall be furnished to the commissioner on or before February 28 of the year following the calendar year for which the return was made.

History: 1985 c 210 art 2 s 6; 1985 c 229 s 3

290.49 TIME LIMIT ON ASSESSMENT, COLLECTION.

[For text of subds 1 to 6, see M.S.1984]

Subd. 7. Court proceedings. Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, including an assessment made under section 290.56, such tax may be collected by a proceeding in court, but only if begun within five years after the date of assessment.

[For text of subds 8 to 11, see M.S.1984]

History: 1985 c 101 s 12

290.491 TAX ON GAIN; DISCHARGE IN BANKRUPTCY.

Any tax due under this chapter on a gain realized on a forced sale pursuant to foreclosure of a mortgage or other security interest in agricultural production property, other real property, or equipment, used in a farm business that was owned and operated by the taxpayer shall be a dischargeable debt in a bankruptcy proceeding under United States Code, title 11, section 727. A gain realized on a sale of agricultural production property, other real property, or equipment, used in a farm business that was owned and operated by the taxpayer shall be exempt from taxation under this chapter, if the taxpayer was insolvent at the time of the sale and the proceeds of the sale were used solely to discharge indebtedness secured by a mortgage, lien or other security interest on the property sold. For purposes of this section, "insolvent" means insolvent as defined in section 108(d)(3) of the Internal Revenue Code of 1954, as amended through December 31, 1984.

History: 1Sp1985 c 14 art 1 s 50

290.50 OVERPAYMENTS, CLAIMS FOR REFUND OR CREDITS.

Subdivision 1. Procedure, time limit. (a) A taxpayer who has paid or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. Except as otherwise provided in this section, no claim or refund shall be allowed or made after 3-1/2 years from the date prescribed for filing the return (plus any extension of time granted for filing the return, but only if filed within the extended time) or after two years from the date of overpayment, whichever period is longer, unless before the expiration of the period a claim is filed by the taxpayer. For this purpose an income tax return or amended return claiming an overpayment shall constitute a claim for refund.

(b) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable if a claim was filed on the date the credit or refund is allowed.

(c) If a claim relates to an overpayment on account of a failure to deduct a loss due to a bad debt or to a security becoming worthless, the claim shall be allowed if filed within seven years from the date prescribed in section 290.42 for the filing of the return, and the refund or credit shall be limited to the amount of overpayment attributable to the loss.

(d) For purposes of this section, the prepayment of tax made through the withholding of tax at the source, or payment of estimated tax, prior to the due date

of the tax are considered as having been paid on the last day prescribed by law for the payment of the tax by the taxpayer. A return filed before the due date shall be considered as filed on the due date.

(e) Except as provided in sections 290.92, subdivision 13, 290.93, subdivision 9, and 290.936, interest on the overpayment refunded or credited to the taxpayer shall be allowed at the rate specified in section 270.76 computed from the date of payment of the tax until the date the refund is paid or credit is made to the taxpayer. However, to the extent that the basis for the refund is a net operating loss carryback or a capital loss carryback, interest shall be computed only from the end of the taxable year in which the loss occurs.

(f) If a taxpayer reports a change in his federal gross income, items of tax preference, deductions, credits, or a renegotiation, or files a copy of his amended federal return, within 90 days as provided by section 290.56, subdivision 2, a refund may be made of any overpayment within one year after such report or amended return is filed except as provided in subdivision 2.

(g) There is hereby appropriated from the general fund to the commissioner of revenue the amounts necessary to make payments of refunds allowed pursuant to this section.

Subd. 2. Denial of claim, court proceedings. If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the taxpayer in the manner prescribed in section 290.46. An appeal from this order may be taken to the Minnesota tax court in the manner prescribed in section 271.06, or the taxpayer may commence an action against the commissioner to recover the denied overpayment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or if an estate or trust, of the principal place of its administration, or in the district court for Ramsey county. The action in the district court shall be commenced within 18 months following the mailing of the order of denial to the taxpayer. If a claim for refund is filed by a taxpayer and no order of denial is issued within six months of the filing, the taxpayer may commence an action in the district court as in the case of a denial, but the action shall be commenced within four years of the date that the claim for refund was filed; provided that the commissioner and the taxpayer may agree to extend this period beyond four years.

[For text of subds 3 and 4, see M.S.1984]

Subd. 5. Overpayments; credits and refunds. (a) If the amount allowable as a credit under section 290.92, subdivision 12 (relating to credit for tax withheld at source) or an amount determined to be an overpayment under section 290.93, subdivision 9, or 290.936 exceeds the taxes imposed by this chapter against which such credit is allowable the amount of such excess shall be considered an overpayment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which such amount was paid.

(b) Notwithstanding any other provision of law to the contrary, in the case of any overpayment the commissioner, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of Minnesota income tax on the part of the person who made the overpayment or against any liability in respect to Minnesota income tax on the part of either spouse who shall have filed a joint return for the taxable year in which the overpayment was made and shall refund any balance of more than one dollar to such person if the taxpayer shall so request.

The commissioner is authorized to prescribe rules providing for the crediting against the estimated income tax for any taxable year of the amount determined by

the commissioner to be an overpayment of the income tax for a preceding taxable year.

Subd. 6. Withholding of refunds from child support debtors. Upon a finding by a court of this state that a person obligated to pay child support is delinquent in making payments, the amount of child support unpaid and owing including attorneys fees and costs incurred in ascertaining or collecting child support shall be withheld from a refund due the person under this section. The public agency responsible for child support enforcement or the parent or guardian of a child for whom the support, attorneys fees and costs are owed may petition the district or county court for an order providing for the withholding of the amount of child support, attorneys fees and costs unpaid and owing as determined by court order. The person from whom the refund may be withheld shall be notified of the petition pursuant to the rules of civil procedure prior to the issuance of an order pursuant to this subdivision. The order may be granted on a showing to the court that required support payments, attorneys fees and costs have not been made when they were due.

On order of the court and on payment of \$3 to the commissioner, the money shall be withheld by the commissioner from the refund due to the person obligated to pay and the amount withheld shall be remitted to the public agency responsible for child support enforcement or to the parent or guardian petitioning on behalf of the child, provided that any delinquent tax obligations of the taxpayer owed to the revenue department shall be satisfied first. Any amount received by the responsible public agency or the petitioning parent or guardian in excess of the amount of public assistance expended for the benefit of the child to be supported, or the amount of any support, attorneys fees and costs that had been the subject of the claim pursuant to this subdivision which has been paid by the taxpayer prior to the diversion of the refund, shall be remitted to the person entitled to the money. If the refund is based on a joint return, the portion of the refund that shall be remitted to the petitioner shall be the proportion of the total refund that equals the proportion of the total federal adjusted gross income of the spouses that is the federal adjusted gross income of the spouse who is delinquent in making the child support payments. A petition filed pursuant to this subdivision shall be in effect with respect to any refunds due under this section until the support money, attorneys fees and costs have been paid in full or the court orders the commissioner to discontinue withholding the money from the refund due the person obligated to pay the support, attorneys fees and costs. If a petition is filed pursuant to this subdivision and a claim is made pursuant to chapter 270A with respect to the same individual's refund and notices of both are received prior to the time when payment of the refund is made on either claim, the claim relating to the liability that accrued first in time shall be paid first; any amount of the refund remaining shall then be applied to the other claim. The provisions of section 290.61 shall not prohibit the exchange of information among the department, the petitioner, and the court to the extent necessary to accomplish the intent of this subdivision.

History: 1985 c 210 art 1 s 11; 1Sp1985 c 13 s 309; 1Sp1985 c 14 art 1 s 51,52; art 15 s 6

290.523 UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

[For text of subd 1, see M.S.1984]

Subd. 2. Understatement of liability defined. For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed by this chapter, or any overstatement of the

net amount creditable or refundable with respect to any such tax. The determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.

For purposes of this subdivision, the amount determined for underpayment of estimated tax under section 290.93, subdivision 10, or 290.934, subdivision 4, is not considered an understatement of liability.

History: 1985 c 210 art 2 s 7

290.53 PENALTIES, INTEREST.

[For text of subds 1 to 8, see M.S.1984]

Subd. 9. **Penalty for promoting abusive tax shelters.** Any person who (a)(1) organizes (or assists in the organization of) a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, or

(2) participates in the sale of any interest in an entity or plan or arrangement referred to in clause (1), and

(b) makes or furnishes (in connection with the organization or sale) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter,

shall pay a penalty equal to the greater of \$1,000 or 20 percent of the gross income derived or to be derived by the person from the activity.

The penalty imposed by this subdivision is in addition to any other penalty provided by this section. The penalty shall be collected in the same manner as any delinquent income tax. In any proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof shall be upon the commissioner.

[For text of subd 10, see M.S.1984]

Subd. 11. **Assisting in fraud and false statements; criminal provisions.** Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under this chapter, of a return, affidavit, claim, or other document, which is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is guilty of a felony. Any criminal offense under this subdivision may be prosecuted in the same manner and within the same period of limitations provided in subdivision 4.

History: 1Sp1985 c 14 art 16 s 3; art 21 s 40

290.531 PAYMENT OF TAX PENDING APPEAL.

When a taxpayer appeals any liability assessed under this chapter to the tax court, and the amount in dispute is more than \$6,000, the entire amount of the tax, penalty, and interest assessed by the commissioner shall be paid at the time it is due unless permission to continue prosecution of the petition without payment is obtained as provided herein. The appellant, upon ten days notice to the commissioner, may apply to the court for permission to continue prosecution of the appeal without payment; and, if it is made to appear

(1) that the proposed review is to be taken in good faith;

(2) that there is probable cause to believe that the taxpayer may be held exempt from the liability or that the liability may be determined to be less than 50 percent of the amount due; and

(3) that it would work a substantial hardship upon appellant to pay the liability, the court may permit the appellant to continue prosecution of the appeal without payment, or may fix a lesser amount to be paid as a condition of continuing the prosecution of the appeal.

Failure to make payment of the amount required when due shall operate automatically to dismiss the appeal and all proceedings thereunder unless the payment is waived by an order of the court permitting the appellant to continue prosecution of the appeal without payment.

History: 1985 c 248 s 47

290.65 TIME LIMITS; PENALTIES.

[For text of subds 9 to 13, see M.S.1984]

Subd. 16. Death while serving United States. In the case of any individual who dies while in active service as a member of the military or naval forces of the United States or of any of the United Nations, any income tax imposed under the provisions of this chapter shall not be imposed with respect to the taxable year in which falls the date of his death, and such tax imposed for any prior taxable year which is unpaid at the date of his death (including additions to the tax, interest and penalties) shall not be assessed, and if assessed, the assessment shall be abated. In addition, upon the filing of a claim for refund within seven years from the date the return was filed, the tax paid or collected with respect to any taxable year beginning after December 31, 1949, during which such decedent was in active service shall be refunded.

In the case of any individual who dies while a civilian employee of the United States, if the death occurs as a result of wounds or injury incurred while the individual was a civilian employee of the United States and which was incurred outside the United States in a terroristic or military action, any tax imposed by this chapter does not apply with respect to the taxable year in which the date of death falls, and with respect to any prior taxable years in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred. The provisions of section 692(c)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1984, defining terroristic or military action also apply.

History: 1Sp1985 c 14 art 21 s 41

290.92 TAX WITHHELD AT SOURCE UPON WAGES.

[For text of subd 1, see M.S.1984]

Subd. 2a. Collection at source. (1) Deductions. Every employer making payment of wages shall deduct and withhold upon such wages a tax as provided in this section.

(2) **Withholding on payroll period.** The employer shall withhold the tax on the basis of each payroll period or as otherwise provided in this section.

(3) **Withholding tables.** Unless the amount of tax to be withheld is determined as provided in subdivision 3, the amount of tax to be withheld for each individual shall be based upon tables to be prepared and distributed by the commissioner. The

tables shall be computed for the several permissible withholding periods and shall take account of exemptions allowed under this section; and the amounts computed for withholding shall be such that the amount withheld for any individual during his taxable year shall approximate in the aggregate as closely as possible the tax which is levied and imposed under this chapter for that taxable year, upon his salary, wages, or compensation for personal services of any kind for the employer, and shall take into consideration the optional deduction for federal income tax and the deduction allowable under section 290.089, subdivision 3, and the personal credits allowed against the tax.

(4) **Miscellaneous payroll period.** If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

(5) **Miscellaneous payroll period.** (a) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(b) In any case in which the period, or the time described in clause (a), in respect of any wages is less than one week, the commissioner, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(6) **Wages computed to nearest dollar.** If the wages exceed the highest bracket, in determining the amount to be deducted and withheld under this subdivision, the wages may, at the election of the employer, be computed to the nearest dollar.

(7) **Regulations on withholding.** The commissioner may, by rule, authorize employers:

(a) to estimate the wages which will be paid to any employee in any quarter of the calendar year;

(b) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

(c) to deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this paragraph (7).

(8) **Additional withholding.** The commissioner is authorized to provide by rule for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this section.

(9) **Tips.** In the case of tips which constitute wages, this subdivision shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as

amended through December 31, 1983, and only to the extent that the tax can be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053 of the Internal Revenue Code of 1954 as amended through December 31, 1983 to which subdivision 1 is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds as are under the control of the employer minus any tax required by other provisions of state or federal law to be collected from such wages and funds.

(10) **Vehicle fringe benefits.** An employer may elect not to deduct and withhold any tax under this section with respect to any vehicle fringe benefit provided to an employee if the requirement of and the definition contained in section 3402(s) of the Internal Revenue Code of 1954, as amended through May 25, 1985, are complied with.

[For text of subds 3 to 5, see M.S.1984]

Subd. 5a. Verification of withholding exemptions; appeal. (1) An employer shall submit to the commissioner a copy of any withholding exemption certificate received from an employee on which the employee claims any of the following:

(a) a total number of withholding exemptions in excess of 14 or a number prescribed by the commissioner, or

(b) a status that would exempt the employee from Minnesota withholding, including where the employee is a nonresident exempt from withholding under subdivision 4a, clause (3), except where the employer reasonably expects, at the time that the certificate is received, that the employee's wages under subdivision 1 from the employer will not then usually exceed \$200 per week, or

(c) any number of withholding exemptions which the employer has reason to believe is in excess of the number to which the employee is entitled.

(2) Copies of exemption certificates required to be submitted by clause (1) shall be submitted to the commissioner within 30 days after receipt by the employer unless the employer is also required by federal law to submit copies to the Internal Revenue Service, in which case the employer may elect to submit the copies to the commissioner at the same time that he is required to submit them to the Internal Revenue Service.

(3) An employer who submits a copy of a withholding exemption certificate in accordance with clause (1) shall honor the certificate until notified by the commissioner that the certificate is invalid. The commissioner shall mail a copy of any such notice to the employee. Upon notification that a particular certificate is invalid, the employer shall not honor that certificate or any subsequent certificate unless instructed to do so by the commissioner. The employer shall allow the employee the number of exemptions and compute the withholding tax as instructed by the commissioner in accordance with clause (4).

(4) The commissioner may require an employee to verify that he or she is entitled to the number of exemptions or to the exempt status claimed on the withholding exemption certificate or, that he or she is a nonresident. The employee shall be allowed at least 30 days to submit the verification, after which time the commissioner shall, on the basis of the best information available to him, determine the employee's status and allow the employee the maximum number of withholding exemptions allowable under this chapter. The commissioner shall mail a notice of this determination to the employee at the address listed on the exemption certificate in question or to the last known address of the employee. Notwithstanding the provisions of section 290.61, the commissioner may notify the employer of this determination and instruct the employer to withhold tax in accordance with the determination.

However, where the commissioner has reasonable grounds for believing that the employee is about to remove himself from this state or that the collection of any tax due under this chapter will be jeopardized by delay, the commissioner may immediately notify the employee and the employer, notwithstanding section 290.61, that the certificate is invalid, and the employer must not honor that certificate or any subsequent certificate unless instructed to do so by the commissioner. The employer shall allow the employee the number of exemptions and compute the withholding tax as instructed by the commissioner.

(5) The commissioner's determination under clause (4) shall be appealable to tax court in accordance with section 271.06, and shall remain in effect for withholding tax purposes pending disposition of any appeal.

Subd. 6. Returns, deposits. (1)(a) **Returns.** Every employer who is required to deduct and withhold tax under subdivision 2a or 3 shall file a return with the commissioner for each quarterly period, on or before the last day of the month following the close of each quarterly period, unless otherwise prescribed by the commissioner. Any tax required to be deducted and withheld during the quarterly period shall be paid with the return unless an earlier time for payment is provided. However, any return may be filed on or before the tenth day of the second calendar month following the period if the return shows timely deposits in full payment of the taxes due for that period. For the purpose of the preceding sentence, a deposit which is not required to be made within the return period, may be made on or before the last day of the first calendar month following the close of the period. Every employer, in preparing a quarterly return, shall take credit for monthly deposits previously made in accordance with this subdivision.

The return shall be in the form and contain the information prescribed by the commissioner. The commissioner may grant a reasonable extension of time for filing the return, but no extension shall be granted for more than six months.

(b) **Advance deposits required in certain cases.** (i) Unless clause (ii) is applicable, if during any calendar month, other than the last month of the calendar quarter, the aggregate amount of the tax withheld during that quarter under subdivision 2a or 3 exceeds \$500, the employer shall deposit the aggregate amount with the commissioner within 15 days after the close of the calendar month. (ii) If at the close of any eighth-monthly period the aggregate amount of undeposited taxes is \$3,000 or more, the employer shall deposit the undeposited taxes with the commissioner within three banking days after the close of the eighth-monthly period. For purposes of this subparagraph, the term "eighth-monthly period" means the first three days of a calendar month, the fourth day through the seventh day of a calendar month, the eighth day through the 11th day of a calendar month, the 12th day through the 15th day of a calendar month, the 16th day through the 19th day of a calendar month, the 20th day through the 22nd day of a calendar month, the 23rd

day through the 25th day of a calendar month, or the portion of a calendar month following the 25th day of the month.

(c) **Other methods.** The commissioner may by rule prescribe other return periods or deposit requirements. In prescribing the reporting period, the commissioner may classify employers according to the amount of their tax liability and may adopt an appropriate reporting period for each class which he deems to be consistent with efficient tax collection. In no event shall the duration of the reporting period be more than one year.

(2) If less than the correct amount of tax is paid to the commissioner, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in the manner and at the times as the commissioner prescribes. If the underpayment cannot be adjusted, the amount of the underpayment shall be assessed and collected in the manner and at the times as the commissioner prescribes.

(3) If any employer fails to make and file any return required by paragraph (1) at the time prescribed, or makes and files a false or fraudulent return, the commissioner shall make for him a return from his own knowledge and from information he obtains through testimony, or otherwise, and assess a tax on the basis of it. The amount of tax shown on it shall be paid to the commissioner at the times as the commissioner prescribes. Any return or assessment made by the commissioner shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect to it.

(4) If the commissioner, in any case, has reason to believe that the collection of the tax provided for in paragraph (1) of this subdivision, and any added penalties and interest, if any, will be jeopardized by delay, he may immediately assess the tax, whether or not the time otherwise prescribed by law for making and filing the return and paying the tax has expired.

(5) Any assessment under this subdivision shall be made by recording the liability of the employer in the office of the commissioner in accordance with rules prescribed by the commissioner. Upon request of the employer, the commissioner shall furnish the employer a copy of the record of assessment.

(6) Any assessment of tax under this subdivision shall be made within 3-1/2 years after the due date of the return required by paragraph (1), or the date the return was filed, whichever is later. In the case of a false or fraudulent return or failure to file a return, the tax may be assessed at any time. The tax may be assessed within 6-1/2 years after the due date of the return or the date the return was filed, whichever is later, where the employer omitted withholding tax from the return which is properly includable therein and the omitted withholding tax is in excess of 25 percent of the amount of withholding tax stated on the return.

(7)(a) Except as provided in (b) of this paragraph, every employer who fails to pay to or deposit with the commissioner any sum or sums required by this section to be deducted, withheld and paid, shall be personally and individually liable to the state for the sum or sums (and any added penalties and interest). Any sum or sums deducted and withheld in accordance with the provisions of subdivision 2a or 3 shall be held to be a special fund in trust for the state of Minnesota.

(b) If the employer, in violation of this section, fails to deduct and withhold the tax under this section, and thereafter the taxes against which the tax may be credited are paid, the tax required to be deducted and withheld shall not be collected from the employer; but this does not relieve the employer from liability for any penalties and interest otherwise applicable for failure to deduct and withhold.

(8) Upon the failure of any employer to pay to or deposit with the commissioner, within the time provided by paragraph (1), (2), or (3) of this subdivision, any tax required to be withheld in accordance with the provisions of subdivision 2a or 3, or if the commissioner has assessed a tax pursuant to paragraph (4), the tax shall become immediately due and payable, and the commissioner may deliver to the attorney general a certified statement of the tax, penalties and interest due from the employer. The statement shall also give the address of the employer owing the tax, the period for which the tax is due, the date of the delinquency, and any other information required by the attorney general. The attorney general shall institute legal action in the name of the state to recover the amount of the tax, penalties, interest and costs. The commissioner's certified statement to the attorney general shall for all purposes and in all courts be prima facie evidence of the facts stated in it and that the amount shown in it is due from the employer named in the statement. If an action is instituted, the court shall, upon application of the attorney general, appoint a receiver of the property and business of the delinquent employer for the purpose of impounding it as security for any judgment which has been or may be recovered. Any action must be brought within five years after the date of assessment of any tax under this subdivision.

(8a) The period of time during which a tax must be assessed or collection proceedings commenced under this subdivision shall be suspended during the period from the date of filing of a petition in bankruptcy until 30 days after the commissioner of revenue receives notice that the bankruptcy proceedings have been closed or dismissed or the automatic stay has been terminated or has expired.

The suspension of the statute of limitations under this subdivision shall apply to the person against whom the petition in bankruptcy is filed and all other persons who may also be wholly or partially liable for the tax under this chapter.

(9) Either party to an action for the recovery of any tax, interest or penalties under this subdivision may appeal the judgment as in other civil cases.

(10) No suit shall lie to enjoin the assessment or collection of any tax imposed by this section, or the interest and penalties added to it.

[For text of subds 6a to 10, see M.S.1984]

Subd. 11. **Refunds.** Where there has been an overpayment of tax imposed by this section, refund of such overpayment or credit shall be made to the employer in accordance with rules prescribed by the commissioner, but only to the extent that the amount of such overpayment was not deducted and withheld under subdivision 2a or 3 by the employer. Any overpayment which is refunded shall bear interest at the rate specified in section 270.76, computed from the date of payment until the date the refund is paid to the employer. The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62 and so much of said fund as may be necessary is hereby appropriated for that purpose. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

[For text of subd 12, see M.S.1984]

Subd. 13. **Refunds.** (1) Where the amount of the tax withheld at the source under subdivision 2a or 3 exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the employee taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the employee taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be

required to refund that amount. Where any amount of such excess to be refunded exceeds \$10, such amount on the original return shall bear interest at the rate specified in section 270.76, computed from 90 days after (a) the due date of the return of the employee taxpayer or (b) the date on which his return is filed, whichever is later, to the date the refund is paid to the taxpayer. A return shall not be treated as filed until it is in processible form. A return is in processible form when it is filed on a permitted form containing the taxpayer's name, address, social security account number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the employee taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest, to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[For text of subd 14, see M.S.1984]

Subd. 15. Penalties. (1) In the case of any failure to withhold a tax on wages, make and file quarterly returns or make payments to or deposits with the commissioner of amounts withheld, as required by this section, within the time prescribed by law, there shall be added to the tax a penalty equal to ten percent of the amount of tax that should have been properly withheld and paid over to or deposited with the commissioner if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which the failure continues, not exceeding 25 percent in the aggregate. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. The amount added to the tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount added shall be collected in the same manner as the tax.

(2) If any employer required to withhold a tax on wages, make deposits, make and file quarterly returns and make payments to the commissioner of amounts withheld, as required by sections 290.92 to 290.97, willfully fails to withhold the tax or make the deposits, files a false or fraudulent return, willfully fails to make the payment or deposit, or willfully attempts in any manner to evade or defeat the tax or the payment or deposit of it, there shall also be imposed on the employer as a penalty an amount equal to 50 percent of the amount of tax, less any amount paid or deposited by the employer on the basis of the false or fraudulent return or deposit, that should have been properly withheld and paid over or deposited with the commissioner. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. The penalty imposed by this paragraph shall be collected as a part of the tax, and shall be in addition to any other penalties civil and criminal, prescribed by this subdivision.

(3) If any person required under the provisions of subdivision 7 to furnish a statement to an employee or payee and a duplicate statement to the commissioner, or to furnish a reconciliation of the statements, and quarterly returns, to the commis-

sioner, willfully furnishes a false or fraudulent statement to an employee or payee or a false or fraudulent duplicate statement or reconciliation of statements, and quarterly returns, to the commissioner, or willfully fails to furnish a statement or the reconciliation in the manner, at the time, and showing the information required by the provisions of subdivision 7, or rules prescribed by the commissioner thereunder, there shall be imposed on the person a penalty of \$50 for each act or failure to act, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000. The penalty imposed by this paragraph is due and payable within ten days after the mailing of a written demand therefor, and may be collected in the manner prescribed in subdivision 6, paragraph (8).

(4) In addition to any other penalties prescribed, any person required to withhold a tax on wages, make and file quarterly returns and make payments or deposits to the commissioner of amounts withheld, as required by this section, who willfully fails to withhold the tax or truthfully make and file the quarterly return or make the payment or deposit, or attempts to evade or defeat the tax is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event he is guilty of a felony.

(5) In lieu of any other penalty provided by law, except the penalty provided by paragraph (3), any person required under the provisions of subdivision 7 to furnish a statement of wages to an employee and a duplicate statement to the commissioner, who willfully furnishes a false or fraudulent statement of wages to an employee or a false or fraudulent duplicate statement of wages to the commissioner, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or rules prescribed by the commissioner thereunder, is guilty of a gross misdemeanor.

(6) Any employee required to supply information to his employer under the provisions of subdivision 5, who willfully fails to supply information or willfully supplies false or fraudulent information thereunder which would require an increase in the tax to be deducted and withheld under subdivision 2a or 3, is guilty of a gross misdemeanor.

(7) The term "person," as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(8) All payments received may, in the discretion of the commissioner of revenue, be credited first to the oldest liability not secured by a judgment or lien, but in all cases shall be credited first to penalties, next to interest, and then to the tax due.

(9) In addition to any other penalty provided by law, any employee who furnishes a withholding exemption certificate to his employer which the employee has reason to know contains a materially incorrect statement is liable to the commissioner of revenue for a penalty of \$500 for each instance. The penalty is immediately due and payable and may be collected in the same manner as any delinquent income tax.

(10) In addition to any other penalty provided by law, any employer who fails to submit a copy of a withholding exemption certificate required by subdivision 5a, clause (1)(a), (1)(b), or (2) is liable to the commissioner of revenue for a penalty of \$50 for each instance. The penalty is immediately due and payable and may be collected in the manner provided in subdivision 6, paragraph (8).

(11) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter

arising under this section, of a return, affidavit, claim, or other document, which is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, is guilty of a gross misdemeanor, unless the tax involved exceeds \$300, in which event he is guilty of a felony.

(12) Notwithstanding the provisions of section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, upon any criminal offense specified in this subdivision, in the proper court within six years after the commission of the offense.

[For text of subds 16 and 17, see M.S.1984]

Subd. 18. Returns; confession of judgment. Any return that is required to be filed with the commissioner of revenue under this section shall (a) contain a written declaration that it is correct and complete, and (b) shall contain language prescribed by the commissioner providing a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

Subd. 19. Employees incurring no income tax liability. Notwithstanding any other provision of this section, except the provisions of subdivision 5a, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate, in such form and containing such other information as the commissioner may prescribe, furnished to the employer by the employee certifying that the employee

(a) incurred no liability for income tax imposed under this chapter for his preceding taxable year, and

(b) anticipates that he will incur no liability for income tax imposed under this chapter for his current taxable year. The commissioner shall by rule provide for the coordination of the provisions of this subdivision with the provisions of subdivision 7.

[For text of subd 20, see M.S.1984]

Subd. 21. Extension of withholding to unemployment compensation benefits. For purposes of this section, any supplemental unemployment compensation benefit paid to an individual to the extent includable in such individual's Minnesota gross income, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

[For text of subd 22, see M.S.1984]

Subd. 23. Withholding by employer of delinquent taxes. (1) The commissioner may, within five years after the date of assessment of the tax, give notice to any employer deriving income which has a taxable situs in this state regardless of whether the income is exempt from taxation, that an employee of that employer is delinquent in a certain amount with respect to any state taxes, including penalties, interest and costs. The commissioner can proceed under this subdivision only if the tax is uncontested or if the time for appeal of the tax has expired. The commissioner shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer, at his last known address, a written notice of (a) the amount of taxes, interest, and penalties due from the taxpayer and demand for their payment, and (b) the commissioner's intention to require additional withholding by the taxpayer's employer pursuant to this subdivision. The effect of the notice shall expire 180 days after it has been mailed to the taxpayer provided that the notice may be renewed by mailing a new notice which is in accordance with this subdivision.

The renewed notice shall have the effect of reinstating the priority of the original claim. The notice to the taxpayer shall be in substantially the same form as that provided in section 571.41. The notice shall further inform the taxpayer of the wage exemptions contained in section 550.37, subdivision 14. If no statement of exemption is received by the commissioner within 30 days from the mailing of the notice, he may proceed under this subdivision. The notice to the taxpayer's employer may be served by mail or by delivery by an employee of the department of revenue and shall be in substantially the same form as provided in section 571.495. Upon receipt of notice, the employer shall withhold from compensation due or to become due to the employee, the total amount shown by the notice, subject to the provisions of section 571.55. The employer shall continue to withhold each pay period until the total amount shown by the notice is paid in full. Upon receipt of notice by the employer, the claim of the state of Minnesota shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and the employee for withholding a portion of the total amount due the employee each pay period, until the total amount shown by the notice plus accrued interest has been withheld.

The "compensation due" any employee is defined in accordance with the provisions of section 571.55. The maximum withholding allowed under this subdivision for any one pay period shall be decreased by any amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the department of the amounts and the facts relating to such assignments within ten days after the service of the notice of delinquency on the form provided by the department of revenue as noted in this subdivision. In crediting amounts withheld against delinquent taxes of an employee, the department shall apply amounts withheld in the following order: penalties, interest, tax and costs.

(2) If the employee ceases to be employed by the employer before the full amount set forth in a notice of delinquency plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount withheld. No employer may discharge any employee by reason of the fact that the commissioner has proceeded under this subdivision. If an employer discharges an employee in violation of this provision, the employee shall have the same remedy as provided in section 571.61, subdivision 2.

(3) The employer shall, by the date prescribed in subdivision 6, remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during the calendar quarter under this subdivision. Should any employer, after notice, willfully fail to withhold in accordance with the notice and this subdivision, or willfully fail to remit any amount withheld as required by this subdivision, the employer shall be liable for the total amount set forth in the notice together with accrued interest which may be collected by any means provided by law relating to taxation. No amount required to be paid by an employer by reason of his failure to remit under this subdivision, may be deducted from the gross income of the employer, under sections 290.09, subdivision 4 or 290.01, subdivisions 20 to 20f. Any amount collected from the employer for failure to withhold or for failure to remit under this subdivision shall be credited to the employee's account in the following manner: penalties, interest, tax and costs.

(4) Clauses (1), (2) and (3), except provisions imposing a liability on the employer for failure to withhold or remit, shall apply to cases in which the employer

is the United States or any instrumentality thereof or this state or any municipality or other subordinate unit thereof.

(5) The commissioner shall refund to the employee excess amounts withheld from him under this subdivision. If any excess results from payments by the employer because of willful failure to withhold or remit as prescribed in clause (3) above, the excess attributable to the employer's payment shall be refunded to the employer.

(6) Employers required to withhold delinquent taxes, penalties, interest and costs under this subdivision shall not be required to compute any additional interest, costs or other charges to be withheld.

(7) The collection remedy provided to the commissioner by this subdivision shall have the same legal effect as if it were a levy made pursuant to section 270.70.

[For text of subds 24 to 27, see M.S.1984]

Subd. 28. Effective with payments made after April 1, 1988, any holder of a license issued by the Minnesota racing commission who makes a payment for personal or professional services to a holder of a class C license issued by the commission, except an amount paid as a purse, shall deduct from the payment and withhold seven percent of the amount as Minnesota withholding tax when the amount paid to that individual by the same person during the calendar year exceeds \$600. For purposes of the provisions of this section, a payment to any person which is subject to withholding under this subdivision must be treated as if the payment was a wage paid by an employer to an employee. Every individual who is to receive a payment which is subject to withholding under this subdivision shall furnish the license holder with a statement, made under the penalties of perjury, containing the name, address, and social security account number of the person receiving the payment. No withholding is required if the individual presents a signed certificate from his employer which states that the individual is an employee of that employer. A nonresident individual who holds a class C license must be treated as an athlete for purposes of applying the provisions of sections 290.17, subdivision 2(1)(b)(ii) and 290.92, subdivision 4a.

History: 1985 c 101 s 13,14; 1985 c 210 art 1 s 12-15; 1Sp1985 c 14 art 1 s 53-56; art 15 s 7,8; art 16 s 4; art 21 s 42

290.93 DECLARATION OF ESTIMATED TAX.

Subdivision 1. **Requirement of declaration.** (1) Every individual shall, at the time prescribed in subdivision 5, make and file with the commissioner a declaration of his estimated tax for the taxable year if

the gross income (for purposes of this subdivision and subdivision 5 as defined in section 290.37, subdivision 1, clause (c)) for the taxable year can reasonably be expected to exceed the gross income amounts set forth in section 290.37, subdivision 1 pertaining to the requirements for making a return.

(2) If the individual is an infant or incompetent person, the declaration shall be made by his guardian.

(3) Notwithstanding the provisions of this section, no declaration is required if the estimated tax (as defined in subdivision 3) is less than \$500.

[For text of subd 2, see M.S.1984]

Subd. 3. **Estimated tax defined.** For purposes of this section, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the sum of the taxes imposed by this chapter (including the tax imposed

by section 290.091), for the taxable year, minus the amount which the individual estimates as his allowable credits against income tax under this chapter.

[For text of subd 4, see M.S.1984]

Subd. 5. Date required. (1) Declarations of estimated tax required by subdivision 1 from individuals other than farmers shall be filed on or before April 15 of each taxable year, except that if the requirements of subdivision 1 are first met

(a) after April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(b) after June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(c) after September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) Declarations of estimated tax required by subdivision 1 from individuals whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in paragraph (1) be filed at any time on or before January 15 of the succeeding taxable year. This paragraph may also be used if the individual's gross income from farming shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on the return.

(3) An individual shall make amendments of a declaration filed during the taxable year, under rules prescribed by the commissioner.

(4) If on or before January 31 (or March 1, in the case of an individual referred to in paragraph (2)) of the succeeding taxable year the taxpayer files a return for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the commissioner

(a) if the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(b) if the tax shown on the return is greater than the estimated tax shown in the declaration previously made or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by paragraph (3) to be filed on or before January 15.

(5) The commissioner may grant a reasonable extension of time for filing the declaration and paying the estimated tax. Except in the case of a taxpayer who is outside the United States, no such extension shall be granted for more than six months.

Subd. 6. Time payment required. (1) The amount of estimated tax with respect to which a declaration is required by subdivision 1 shall be paid as follows:

(a) If the declaration is filed on or before April 15 of the taxable year, it shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(b) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by subdivision 5(1) of this section to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the

declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(c) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by subdivision 5(1) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(d) If the declaration is filed after September 15 of the taxable year, and is not required by subdivision 5(1) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(e) If the declaration is filed after the time prescribed in subdivision 5(1) or (2) including cases in which an extension of time for filing the declaration has been granted under subdivision 5(5), subparagraphs (b), (c), and (d) shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subdivision 5(1) or (2), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(2) If an individual referred to in subdivision 5(2) (relating to income from farming) makes a declaration of estimated tax on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(3) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect such increase or decrease in the estimated tax by reason of such amendment, and if such amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(4) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(5) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the taxes imposed upon the individual by this chapter, for the taxable year.

Subd. 7. Fiscal year. The application of this section to taxable years beginning other than January 1, must be made by substituting, for the months specified in this section, the months that correspond. This section must be applied to taxable years of less than 12 months, pursuant to rules issued by the commissioner.

[For text of subd 8, see M.S.1984]

Subd. 9. Overpayment of estimated tax. (1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments plus (a) the total amount of tax withheld at the source under section 290.92, subdivision 2a or 3 (if any) and (b) and other payments (if any) exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds \$10, such amount on the original return shall bear interest at the rate specified in section 270.76, computed from 90 days after (a)

the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. A return shall not be treated as filed until it is in processible form. A return is in processible form when the return is filed on a permitted form, and the return contains the taxpayer's name, address, social security account number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Subd. 10. Underpayment of estimated tax. (1) In the case of any underpayment of estimated tax by an individual, except as provided in paragraph (4), (5), or (6), there must be added to and become a part of the taxes imposed by this chapter, for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment for the period of the underpayment.

(2) For purposes of the preceding paragraph, the amount of underpayment shall be the excess of

(a) the amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent ($66\frac{2}{3}$ percent in the case of farmers referred to in subdivision 5(2)) of the taxes shown on the return for the taxable year or 80 percent ($66\frac{2}{3}$ percent in the case of farmers referred to above) the taxes for such year if no return was filed, over

(b) the amount, if any, of the installment paid on or before the last day prescribed for such payment.

(3) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier

(a) The 15th day of the fourth month following the close of the taxable year.

(b) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subparagraph, a payment of estimated tax on any installment date shall be considered a payment of any unpaid required installments in the order in which the installments are required to be paid.

(4) The addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

(a) The total tax liability shown on the return of the individual for the preceding taxable year (if a return showing a liability for such taxes was filed by the individual for the preceding taxable year of 12 months), or

(b) An amount equal to the applicable percentage of the tax for the taxable year (after deducting personal credits) computed by placing on an annualized basis the taxable income and alternative minimum taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. The applicable percentage of the tax is 20 percent in the case of the first installment,

40 percent for the second installment, 60 percent for the third installment, and 80 percent for the fourth installment. For purposes of this subparagraph, the taxable income and alternative minimum taxable income shall be placed on an annualized basis by

(i) Multiplying by 12 (or in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income and alternative minimum taxable income computed for the months in the taxable year ending before the month in which the installment is required to be paid.

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls.

(5) No addition to the tax shall be imposed under this subdivision for any taxable year if:

(a) the individual did not have any liability for tax for the preceding taxable year,

(b) the preceding taxable year was a taxable year of 12 months, and

(c) the individual was a resident of Minnesota throughout the preceding taxable year.

(6) No addition to the tax shall be imposed under this subdivision with respect to any underpayment to the extent the commissioner determines that the provisions of section 6654(e)(3) of the Internal Revenue Code of 1954, as amended through December 31, 1984, apply.

(7) For the purposes of applying this subdivision, the estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 290.92, subdivision 12 (relating to tax withheld at source on wages), and any other refundable credits which are allowed against income tax liability, and the amount of such credits for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amounts shall be deemed paid on each installment date (determined under subdivisions 6 and 7) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

[For text of subd 11, see M.S.1984]

History: *1Sp1985 c 14 art 15 s 9; art 21 s 43-48*

290.931 DECLARATIONS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. **Requirements of declaration.** Every corporation subject to taxation under this chapter (excluding section 290.92) shall make a declaration of estimated tax for the taxable year if its tax liability so computed can reasonably be expected to exceed \$1,000, or in accordance with rules prescribed by the commissioner for an affiliated group of corporations electing to file one return as permitted by rules prescribed under section 290.37, subdivision 1.

[For text of subds 3 and 5, see M.S.1984]

History: *1Sp1985 c 14 art 1 s 57*

290.936 OVERPAYMENT OF ESTIMATED TAX.

(1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the

overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments and other payments, if any, exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1, the commissioner shall not be required to refund. Where any amount of such excess to be refunded exceeds \$10, such amount on the original return shall bear interest at the rate specified in section 270.76, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

History: *1Sp1985 c 14 art 15 s 10*

290.97 CONTRACTS WITH STATE; WITHHOLDING.

No department of the state of Minnesota, nor any political or governmental subdivision of the state shall make final settlement with any contractor under a contract requiring the employment of employees for wages by said contractor and by subcontractors until satisfactory showing is made that said contractor or subcontractor has complied with the provisions of section 290.92. A certificate by the commissioner of revenue shall satisfy this requirement with respect to the contractor or subcontractor. If, at the time of final settlement, there are any unpaid withholding taxes, penalties, or interest arising from the government contract, the department shall issue a certification to the contractor or subcontractor upon payment, with certified funds, of any unpaid withholding taxes, penalties, and interest. Payment is received by the department upon delivery of the certified funds to the central office located in St. Paul, or any district or subdistrict office located throughout the state.

History: *1985 c 210 art 1 s 16*

290.9726 CORPORATION TAXABLE INCOME TAXED TO SHAREHOLDERS.

[For text of subd 1, see M.S.1984]

Subd. 2. Character of items distributed or considered distributed. The character of any item of income, gain, loss, or deduction included in shareholder's income, for the period of time that the shareholder is not a resident of Minnesota, shall be assignable as provided in section 290.17, subdivision 2, as if the item were realized directly from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation.

[For text of subds 3 to 6, see M.S.1984]

History: *1985 c 210 art 2 s 8*