

Income and Estate Taxes

CHAPTER 290

INCOME AND EXCISE TAXES

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290.01 DEFINITIONS.

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

Subd. 1a. **Uniform probate code.** The definitions set forth in section 524.1-201, wherever appropriate to the administration of the provisions of this chapter, are incorporated by reference herein.

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

Subd. 3. **Partnership; partner.** The terms "partnership" and "partner" have the meanings given in section 7701(a)(2) of the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 3a. **Trust.** The term "trust" has the meaning provided under the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 4. **Corporation.** The term "corporation" shall include every entity which is a corporation under section 7701(a)(3) or is treated as a corporation under section 851(q) or 7704 of the Internal Revenue Code of 1986, as amended through December 31, 1987, and financial institutions. A corporation's franchise is its authorization to exist and conduct business, whether created by legislation, by executive order, by a governmental agency, by contract or other private action, or by some combination thereof. Every corporation is deemed to have a corporate franchise. An entity described in section 646(b) of the Tax Reform Act of 1986, Public Law Number 99-514, shall be classified in the same manner for purposes of this chapter as it is for federal income tax purposes.

Subd. 4a. **Financial institution.** (a) "Financial institution" means:

- (1) a holding company;
- (2) any regulated financial corporation; or
- (3) any other corporation organized under the laws of the United States or organized under the laws of this state or any other state or country that is carrying on the business of a financial institution.

(b) "Holding company" means any corporation registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended.

(c) "Regulated financial corporation" means an institution, the deposits or accounts of which are insured under the Federal Deposit Insurance Act or by the Federal Savings and Loan Insurance Corporation, any institution which is a member of a Federal Home Loan Bank, any other bank or thrift institution incorporated or organized under the laws of any state or any foreign country which is engaged in the business of receiving deposits, any corporation organized under the provisions of United States Code, title 12, sections 611 to 631 (Edge Act Corporations), and any agency of a foreign depository as defined in United States Code, title 12, section 3101.

(d) "Business of a financial institution" means:

(1) the business that a regulated financial corporation may be authorized to do under state or federal law or the business that its subsidiary is authorized to do by the proper regulatory authorities;

(2) the business that any corporation organized under the authority of the United States or organized under the laws of this state or any other state or country does or has authority to do which is substantially similar to the business which a corporation may be created to do under chapters 46 to 55 or any business which a corporation or its subsidiary is authorized to do by those laws; or

(3) the business that any corporation organized under the authority of the United States or organized under the laws of this state or any other state or country does or has authority to do if the corporation derives more than 50 percent of its gross income

from lending activities (including discounting obligations) in substantial competition with the businesses described in clauses (1) and (2). For purposes of this clause, the computation of the gross income of a corporation does not include income from nonrecurring, extraordinary items.

Subd. 5. Domestic corporation. The term "domestic" when applied to a corporation means a corporation:

(1) created or organized in the United States, or under the laws of the United States or of any state, the District of Columbia, or any political subdivision of any of the foregoing but not including the commonwealth of Puerto Rico, or any possession of the United States;

(2) which qualifies as a DISC, as defined in section 992(a) of the Internal Revenue Code of 1986, as amended through December 31, 1987; or

(3) which qualifies as a FSC, as defined in section 922 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 5a. Foreign corporation. The term "foreign," when applied to a corporation, means a corporation other than a domestic corporation.

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

Subd. 6a. Abode. For purposes of section 290.01, subdivision 7, the term "abode" means a dwelling maintained by an individual, whether or not owned by the individual and whether or not occupied by the individual, and includes a dwelling place owned or leased by the individual's spouse.

Subd. 6b. Foreign operating corporation. The term "foreign operating corporation," when applied to a corporation, means a domestic corporation with the following characteristics:

(1) it is part of a unitary business at least one member of which is taxable in this state; and

(2) either (i) the average of the percentages of its property and payrolls assigned to locations inside the United States and the District of Columbia, excluding the commonwealth of Puerto Rico and possessions of the United States, as determined under section 290.191 or 290.20, is 20 percent or less; or (ii) it has in effect a valid election under section 936 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 7. Resident. The term "resident" means (1) any individual domiciled in Minnesota, except that an individual is not a "resident" for the period of time that the individual is a "qualified individual" as defined in section 911(d)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1987, unless, during that period, a Minnesota homestead application is filed for property in which the individual has an interest; and (2) any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota, unless the individual or the spouse of the individual is in the armed forces of the United States, or the individual is covered under the reciprocity provisions in section 290.081.

For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state. Individuals shall keep adequate records to substantiate the days spent outside the state.

Subd. 7a. Resident estate. Resident estate means the estate of a deceased person where (a) the decedent was domiciled in Minnesota at the date of death, or (b) the personal representative or fiduciary was appointed by a Minnesota court in a proceeding other than an ancillary proceeding, or (c) the administration of the estate is carried on in Minnesota in a proceeding other than an ancillary proceeding.

Subd. 7b. Resident trust. Resident trust means a trust except a grantor type trust which is administered in this state. The term "grantor type trust" means a trust where the income or gains of the trust are taxable to the grantor or others treated as substantial

owners under sections 671 to 678 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 8. Fiduciary. The term "fiduciary" means a guardian, trustee, receiver, conservator, personal representative, or any person acting in any fiduciary capacity for any person or corporation.

Subd. 8a. Personal representative. The term "personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

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

Subd. 10. Fiscal year. The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by section 290.40(2), the term means the annual period (varying from 52 to 53 weeks) so elected.

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

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

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

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

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

Subd. 16. Commissioner. The term "commissioner" means the commissioner of revenue of the state of Minnesota.

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

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

Subd. 19. Net income. The term "net income" means the federal taxable income, as defined in section 63 of the Internal Revenue Code of 1986, as amended through the date named in this subdivision, incorporating any elections made by the taxpayer in accordance with the Internal Revenue Code in determining federal taxable income for federal income tax purposes, and with the modifications provided in subdivisions 19a to 19f.

In the case of a regulated investment company or a fund thereof, as defined in section 851(a) or 851(q) of the Internal Revenue Code, federal taxable income means investment company taxable income as defined in section 852(b)(2) of the Internal Revenue Code, except that:

(1) the exclusion of net capital gain provided in section 852(b)(2)(A) of the Internal Revenue Code does not apply; and

(2) the deduction for dividends paid under section 852(b)(2)(D) of the Internal

Revenue Code must be applied by allowing a deduction for capital gain dividends and exempt-interest dividends as defined in sections 852(b)(3)(C) and 852(b)(5) of the Internal Revenue Code.

The Internal Revenue Code of 1986, as amended through December 31, 1986, shall be in effect for taxable years beginning after December 31, 1986. The provisions of sections 10104, 10202, 10203, 10204, 10206, 10212, 10221, 10222, 10223, 10226, 10227, 10228, 10611, 10631, 10632, and 10711 of the Omnibus Budget Reconciliation Act of 1987, Public Law Number 100-203, shall be effective at the time they become effective for federal income tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1987, shall be in effect for taxable years beginning after December 31, 1987.

Except as otherwise provided, references to the Internal Revenue Code in subdivisions 19a to 19f mean the code in effect for purposes of determining net income for the applicable year.

Subd. 19a. Additions to federal taxable income. For individuals, estates, and trusts, there shall be added to federal taxable income:

(1)(i) interest income on obligations of any state other than Minnesota or a political or governmental subdivision, municipality, or governmental agency or instrumentality of any state other than Minnesota exempt from federal income taxes under the Internal Revenue Code or any other federal statute, and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, except the portion of the exempt-interest dividends derived from interest income on obligations of the state of Minnesota or its political or governmental subdivisions, municipalities, governmental agencies or instrumentalities, but only if the portion of the exempt-interest dividends from such Minnesota sources paid to all shareholders represents 95 percent or more of the exempt-interest dividends that are paid by the regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, or the fund of the regulated investment company as defined in section 851(q) of the Internal Revenue Code of 1986, making the payment; and

(2) the amount of income taxes paid or accrued within the taxable year under this chapter and income taxes paid to any other state or to any province or territory of Canada, to the extent allowed as a deduction under section 63(d) of the Internal Revenue Code, but the addition may not be more than the amount by which the itemized deductions as allowed under section 63(d) of the Internal Revenue Code exceeds the amount of the standard deduction as defined in section 63(c) of the Internal Revenue Code; and

(3) the capital gain amount of a lump sum distribution to which the special tax under section 1122(h)(3)(B)(ii) of the Tax Reform Act of 1986, Public Law Number 99-514, applies.

Subd. 19b. Subtractions from federal taxable income. For individuals, estates, and trusts, there shall be subtracted from federal taxable income:

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

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

(3) the amount paid to others not to exceed \$650 for each dependent in grades kindergarten 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. In order to qualify for the subtraction under this clause the taxpayer must elect to itemize deductions under section 63(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(4) to the extent included in federal taxable income, distributions from a qualified governmental pension plan, an individual retirement account, simplified employee pension, or qualified plan covering a self-employed person that represent a return of contributions that were included in Minnesota gross income in the taxable year for which the contributions were made but were deducted or were not included in the computation of federal adjusted gross income. The distribution shall be allocated first to return of contributions until the contributions included in Minnesota gross income have been exhausted. This subtraction applies only to contributions made in a taxable year prior to 1985;

(5) income as provided under section 290.0802; and

(6) the amount of unrecovered accelerated cost recovery system deductions allowed under subdivision 19g.

Subd. 19c. Corporations; additions to federal taxable income. For corporations, there shall be added to federal taxable income:

(1) the amount of any deduction taken for federal income tax purposes for income, excise, or franchise taxes based on net income or related minimum taxes paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States;

(2) interest not subject to federal tax upon obligations of: the United States, its possessions, its agencies, or its instrumentalities; the state of Minnesota or any other state, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities; or the District of Columbia;

(3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(4) the amount of any windfall profits tax deducted under section 164 or 471 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(5) the amount of any net operating loss deduction taken for federal income tax purposes under section 172 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(6) the amount of any special deductions taken for federal income tax purposes under sections 241 to 247 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

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

(8) the amount of any capital losses deducted for federal income tax purposes under sections 1211 and 1212 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(9) the amount of any charitable contributions deducted for federal income tax purposes under section 170 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(10) the exempt foreign trade income of a foreign sales corporation under sections 921(a) and 291 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(11) the amount of percentage depletion deducted under sections 611 through 614

and 291 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(12) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, the amount of the amortization deduction allowed in computing federal taxable income for those facilities; and

(13) the amount of any deemed dividend from a foreign operating corporation determined pursuant to section 290.17, subdivision 4, paragraph (g).

Subd. 19d. Corporations; modifications decreasing federal taxable income. For corporations, there shall be subtracted from federal taxable income after the increases provided in subdivision 19c:

(1) the amount of foreign dividend gross-up added to gross income for federal income tax purposes under section 78 of the Internal Revenue Code;

(2) the decrease in salary expense for federal income tax purposes due to claiming the federal jobs credit under section 51 of the Internal Revenue Code;

(3) any dividend (not including any distribution in liquidation) paid within the taxable year by a national or state bank to the United States, or to any instrumentality of the United States exempt from federal income taxes, on the preferred stock of the bank owned by the United States or the instrumentality;

(4) amounts disallowed for intangible drilling costs due to differences between this chapter and the Internal Revenue Code in taxable years beginning before January 1, 1987, as follows:

(i) to the extent the disallowed costs are represented by physical property, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7, subject to the modifications contained in subdivision 19e; and

(ii) to the extent the disallowed costs are not represented by physical property, an amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section 290.09, subdivision 8;

(5) the deduction for capital losses pursuant to sections 1211 and 1212 of the Internal Revenue Code of 1986, as amended through December 31, 1987, except that:

(i) for capital losses incurred in taxable years beginning after December 31, 1986, capital loss carrybacks shall not be allowed;

(ii) for capital losses incurred in taxable years beginning after December 31, 1986, a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be allowed;

(iii) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryback to each of the three taxable years preceding the loss year, subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

(iv) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryover to each of the five taxable years succeeding the loss year to the extent such loss was not used in a prior taxable year and subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed;

(6) an amount for interest and expenses relating to income not taxable for federal income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or 291 of the Internal Revenue Code of 1986, as amended through December 31, 1987, in computing federal taxable income;

(7) in the case of mines, oil and gas wells, other natural deposits, and timber for which percentage depletion was disallowed pursuant to subdivision 19c, clause (11), a reasonable allowance for depletion based on actual cost. In the case of leases the deduction must be apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held in trust, the allowable deduction must be apportioned between the income beneficiaries and the trustee in

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accordance with the pertinent provisions of the trust, or if there is no provision in the instrument, on the basis of the trust's income allocable to each;

(8) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7;

(9) the amount included in federal taxable income attributable to the credits provided in Minnesota Statutes 1986, section 273.1314, subdivision 9, or Minnesota Statutes, section 469.171, subdivision 6;

(10) amounts included in federal taxable income that are due to refunds of income, excise, or franchise taxes based on net income or related minimum taxes paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or a foreign country or possession of the United States to the extent that the taxes were added to federal taxable income under section 290.01, subdivision 19c, clause (1), in a prior taxable year; and

(11) the following percentage of royalties, fees, or other like income accrued or received from a foreign operating corporation or a foreign corporation which is part of the same unitary business as the receiving corporation:

| Taxable Year | |
|-------------------------|-------------|
| Beginning After | Percentage |
| December 31, 1988 | 50 percent |
| December 31, 1990 | 80 percent. |

Subd. 19e. Depreciation modifications for corporations. In the case of corporations, a modification shall be made for the accelerated cost recovery system. The allowable deduction for the accelerated cost recovery system is the same amount as provided in section 168 of the Internal Revenue Code with the following modifications. The modifications apply to taxable years beginning after December 31, 1986, and to property for which deductions under the Tax Reform Act of 1986, Public Law Number 99-514, are elected or apply.

(a) For property placed in service after December 31, 1980, and before January 1, 1987, 40 percent of the allowance pursuant to section 168 of the Internal Revenue Code of 1954, as amended through December 31, 1985, for 15-, 18-, or 19-year real property shall not be allowed and for all other property 20 percent shall not be allowed.

(b) For property placed in service after December 31, 1987, no modification shall be made.

(c) For property placed in service after July 31, 1986, and before January 1, 1987, for which the taxpayer elects the deduction pursuant to section 203 of the Tax Reform Act of 1986, Public Law Number 99-514, and for property placed in service after December 31, 1986, and before January 1, 1988, 15 percent of the allowance pursuant to section 168 of the Internal Revenue Code of 1986 shall not be allowed.

(d) For property placed in service after December 31, 1980, and before January 1, 1987, for which the taxpayer elects to use 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 1986, as amended through December 31, 1986, but excluding property for which the taxpayer elects the deduction pursuant to section 203 of the Tax Reform Act of 1986, Public Law Number 99-514, the modifications provided in paragraph (a) do not apply.

(e) For property subject to the modifications contained in paragraphs (a) and (c) and Minnesota Statutes 1986, section 290.09, subdivision 7, clause (c), the following modification shall be made after the entire amount of the allowable deduction has been allowed for federal tax purposes for that property under the provisions of section 168 of the Internal Revenue Code of 1986, as amended through December 31, 1987. The remaining depreciable basis in those assets for Minnesota purposes, including the amount of any basis reduction to reflect the investment tax credit for federal purposes

under sections 48(q) and 49(d) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall be a depreciation allowance computed using the straight line method over the following number of years:

- (1) three-year property, one year;
- (2) five-year and seven-year property, two years;
- (3) ten-year property, five years; and
- (4) all other property, seven years.

(f) For property placed in service after December 31, 1987, the remaining depreciable basis for Minnesota purposes that is attributable to the basis reduction for federal purposes to reflect the investment tax credit under sections 48(q) and 49(d) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall be allowed as a deduction in 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 1986, has been allowed, except that where the straight line method provided in section 168(b)(3) is used, the deduction provided in this clause shall be allowed in the last taxable year in which an allowance for depreciation is allowed for that property.

(g) For qualified timber property for which the taxpayer made an election under section 194 of the Internal Revenue Code of 1986, the remaining depreciable basis for Minnesota purposes is allowed as a deduction in the first taxable year after the entire allowable deduction has been allowed for federal tax purposes.

(h) The basis of property to which section 168 of the Internal Revenue Code applies is its basis as provided in this chapter including the modifications provided in this subdivision and in Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c). The recapture tax provisions provided in sections 1245 and 1250 of the Internal Revenue Code of 1986, as amended through December 31, 1987, apply but must be calculated using the basis provided in the preceding sentence.

(i) The basis of an asset acquired in an exchange of assets, including an involuntary conversion, is the same as its federal basis under the provisions of the Internal Revenue Code of 1986, except that the difference in basis due to the modifications in this subdivision and in Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c), is a deduction as provided in paragraph (e).

Subd. 19f. Basis modifications affecting gain or loss on disposition of property.

(a) For individuals, estates, and trusts, the basis of property is its adjusted basis for federal income tax purposes except as set forth in paragraphs (f) and (g). For corporations, the basis of property is its adjusted basis for federal income tax purposes, without regard to the time when the property became subject to tax under this chapter or to whether out-of-state losses or items of tax preference with respect to the property were not deductible under this chapter, except that the modifications to the basis for federal income tax purposes set forth in paragraphs (b) to (j) are allowed to corporations, and the resulting modifications to federal taxable income must be made in the year in which gain or loss on the sale or other disposition of property is recognized.

(b) The basis of property shall not be reduced to reflect federal investment tax credit.

(c) The basis of property subject to the accelerated cost recovery system under section 168 of the Internal Revenue Code shall be modified to reflect the modifications in depreciation with respect to the property provided for in subdivision 19e. For certified pollution control facilities for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, the basis of the property must be increased by the amount of the amortization deduction not previously allowed under this chapter.

(d) For property acquired before January 1, 1933, the basis for computing a gain is the fair market value of the property as of that date. The basis for determining a loss is the cost of the property to the taxpayer less any depreciation, amortization, or depletion, actually sustained before that date. If the adjusted cost exceeds the fair market value of the property, then the basis is the adjusted cost regardless of whether there is a gain or loss.

(e) The basis is reduced by the allowance for amortization of bond premium if an election to amortize was made pursuant to Minnesota Statutes 1986, section 290.09, subdivision 13, and the allowance could have been deducted by the taxpayer under this chapter during the period of the taxpayer's ownership of the property.

(f) For assets placed in service before January 1, 1987, corporations, partnerships, or individuals engaged in the business of mining ores other than iron ore or taconite concentrates subject to the occupation tax under chapter 298 must use the occupation tax basis of property used in that business.

(g) For assets placed in service before January 1, 1990, corporations, partnerships, or individuals engaged in the business of mining iron ore or taconite concentrates subject to the occupation tax under chapter 298 must use the occupation tax basis of property used in that business.

(h) In applying the provisions of sections 301(c)(3)(B), 312(f) and (g), and 316(a)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1987, the dates December 31, 1932, and January 1, 1933, shall be substituted for February 28, 1913, and March 1, 1913, respectively.

(i) In applying the provisions of section 362(a) and (c) of the Internal Revenue Code of 1986, as amended through December 31, 1987, the date December 31, 1956, shall be substituted for June 22, 1954.

(j) The basis of property shall be increased by the amount of intangible drilling costs not previously allowed due to differences between this chapter and the Internal Revenue Code.

(k) The adjusted basis of any corporate partner's interest in a partnership is the same as the adjusted basis for federal income tax purposes modified as required to reflect the basis modifications set forth in paragraphs (b) to (j). The adjusted basis of a partnership in which the partner is an individual, estate, or trust is the same as the adjusted basis for federal income tax purposes modified as required to reflect the basis modifications set forth in paragraphs (f) and (g).

(l) The modifications contained in paragraphs (b) to (j) also apply to the basis of property that is determined by reference to the basis of the same property in the hands of a different taxpayer or by reference to the basis of different property.

Subd. 19g. ACRS modification for individuals. (a) An individual is allowed a subtraction from federal taxable income for the amount of accelerated cost recovery system deductions that were added to federal adjusted gross income in computing Minnesota gross income for taxable year 1981, 1982, 1983, or 1984 and that were not deducted in a later taxable year. The deduction is allowed beginning in the first taxable year after the entire allowable deduction for the property has been allowed under federal law or the first taxable year beginning after December 31, 1987, whichever is later. The amount of the deduction is computed by deducting the amount added to federal adjusted gross income in computing Minnesota gross income (less any deduction allowed under Minnesota Statutes 1986, section 290.01, subdivision 20f) in equal annual amounts over five years.

(b) In the event of a sale or exchange of the property, a deduction is allowed equal to the lesser of (1) the remaining amount that would be allowed as a deduction under paragraph (a) or (2) the amount of capital gain recognized and the amount of cost recovery deductions that were subject to recapture under sections 1245 and 1250 of the Internal Revenue Code of 1986 for the taxable year.

(c) In the case of a corporation electing S corporation status under section 1362 of the Internal Revenue Code, the amount of the corporation's cost recovery allowances that have been deducted in computing federal tax, but have been added to federal taxable income or not deducted in computing tax under this chapter as a result of the application of subdivision 19e, paragraphs (a) and (c) or Minnesota Statutes 1986, section 290.09, subdivision 7, is allowed as a deduction to the shareholders under the provisions of paragraph (a).

Subd. 20. Gross income. The term "gross income" means the gross income as

defined in section 61 of the Internal Revenue Code of 1986, as amended through the date named in subdivision 19 for the applicable taxable year, plus any additional items of income taxable under this chapter but not taxable under the Internal Revenue Code, less any items included in federal gross income but of a character exempt from state income tax under the laws of the United States.

Subd. 20a. [Repealed, 1987 c 268 art 1 s 127]

Subd. 20b. [Repealed, 1987 c 268 art 1 s 127]

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

Subd. 20d. [Repealed, 1987 c 268 art 1 s 127]

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. [Repealed, 1987 c 268 art 1 s 127]

Subd. 21. [Repealed, 1987 c 268 art 1 s 127]

Subd. 22. **Taxable net income.** For tax years beginning after December 31, 1986, the term "taxable net income" means:

(1) for resident individuals the same as net income;

(2) for individuals who were not residents of Minnesota for the entire year, the same as net income except that the tax is imposed only on the Minnesota apportioned share of that income as determined pursuant to section 290.06, subdivision 2c, paragraph (e);

(3) for all other taxpayers, the part of net income that is allocable to Minnesota by assignment or apportionment under one or more of sections 290.17, 290.191, 290.20, 290.35, and 290.36.

For tax years beginning before January 1, 1987, the term "taxable net income" means the net income assignable to this state pursuant to sections 290.17 to 290.20. For corporations, taxable net income is then reduced by the deductions contained in section 290.21.

Subd. 23. [Repealed, 1983 c 342 art 1 s 44]

Subd. 24. [Repealed, 1987 c 268 art 1 s 127]

Subd. 25. [Repealed, 1983 c 15 s 33]

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

Subd. 27. [Repealed, 1983 c 342 art 1 s 44]

Subd. 28. [Repealed, 1983 c 207 s 44; 1983 c 342 art 1 s 44]

Subd. 29. **Taxable income.** For tax years beginning after December 31, 1986, the term "taxable income" means:

(1) for individuals, estates, and trusts, the same as taxable net income;

(2) for corporations, the taxable net income less

(i) the net operating loss deduction under section 290.095;

(ii) the dividends received deduction under section 290.21, subdivision 4; and

(iii) the charitable contribution deduction under section 290.21, subdivision 3.

Subd. 30. **References to the Internal Revenue Code.** Except when inappropriate, a reference in this chapter (1) to the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986, and (2) to the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

History: (2394-1, 2394-10, 2394-21, 2394-22) 1933 c 405 s 1,10,11,21,22; Ex1937 c

49 s 16; 1941 c 550 s 4,11; 1943 c 656 s 1,11; 1945 c 604 s 1,2,19; 1947 c 635 s 1; 1949 c 541 s 1; 1949 c 734 s 1-3; 1953 c 648 s 1; 1955 c 21 s 1; 1955 c 122 s 1; 1955 c 385 s 1; 1957 c 621 s 9; 1957 c 769 s 1; Ex1959 c 83 s 1; 1961 c 213 art 4 s 1; Ex1961 c 51 s 1; 1963 c 355 s 1; 1967 c 579 s 1; 1969 c 575 s 1; 1971 c 206 s 1; 1971 c 769 s 1,2; 1971 c 771 s 1; 1973 c 232 s 1; 1973 c 582 s 3; 1973 c 711 s 1,3; 1973 c 737 s 1; 1974 c 157 s 2; 1974 c 201 s 1; 1975 c 47 s 1; 1975 c 226 s 2; 1975 c 349 s 1-6,29; 1976 c 2 s 101; 1976 c 210 s 12; 1977 c 298 s 1; 1977 c 376 s 1,13; 1977 c 423 art 1 s 1; 1977 c 429 s 63; 1978 c 674 s 30; 1978 c 721 art 6 s 1; 1978 c 763 s 2; 1978 c 767 s 14,15; 1979 c 50 s 38; 1979 c 303 art 1 s 1; 1980 c 419 s 1; 1980 c 439 s 1; 1980 c 512 s 8; 1980 c 607 art 1 s 1,2,32; 1981 c 49 s 1; 1981 c 60 s 1,27; 1981 c 178 s 1-9; 1981 c 254 s 2; 1981 c 261 s 20; 1981 c 344 s 1; 1Sp1981 c 1 art 9 s 5; 3Sp1981 c 2 art 3 s 2; 1982 c 523 art 1 s 1,2; art 7 s 1; art 40 s 1,2,14; 3Sp1982 c 1 art 5 s 1,2; 1983 c 207 s 2-5,43; 1983 c 342 art 1 s 1-5,43; 1984 c 502 art 2 s 3; 1984 c 514 art 1 s 1,2,8; art 2 s 3-7; 1984 c 655 art 1 s 47; 1985 c 2 s 1; 1Sp1985 c 14 art 1 s 7-12; art 13 s 1; art 21 s 1,2,49; 1Sp1985 c 16 art 2 s 27; 1986 c 398 art 21 s 1; 1986 c 444; 1Sp1986 c 1 art 1 s 1,9; 1987 c 268 art 1 s 4-21,126; 1988 c 719 art 1 s 1-5; art 2 s 7-14; art 3 s 1-3,12

NOTE: Subdivisions 5 and 19c, clause (13), as amended by Laws 1988, chapter 719, article 2, sections 7 and 11, and subdivisions 5a and 6b, as added by sections 8 and 9, are effective for taxable years beginning after December 31, 1990, except that subdivisions 6b and 19c, clause (13), are effective for taxable years beginning after December 31, 1989, insofar as they apply to 936 corporations. See Laws 1988, chapter 719, article 2, section 57.

290.011 [Repealed, 1984 c 514 art 2 s 36]

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

290.013 [Repealed, 1987 c 268 art 1 s 127]

290.014 JURISDICTION TO TAX IN GENERAL.

Subdivision 1. Resident individuals. All net income of a resident individual is subject to tax under this chapter.

Subd. 2. Nonresident individuals. Income of a nonresident individual is subject to tax under this chapter and a nonresident individual is subject to the return filing requirements under this chapter to the extent that the income is:

(1) allocable to this state under section 290.17, 290.191, or 290.20;

(2) taxed to the individual under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in the individual's capacity as a beneficiary of an estate with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 662(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the individual directly from the source from which realized by the estate;

(3) taxed to the individual under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character that is taxable under this chapter) in the individual's capacity as a beneficiary or grantor or other person treated as a substantial owner of a trust with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 652(b), 662(b), or 664(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the individual directly from the source from which realized by the trust;

(4) taxed to the individual under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in the individual's capacity as a limited or general partner in a partnership with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 702(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section

290.17, 290.191, or 290.20 if realized by the individual directly from the source from which realized by the partnership; or

(5) taxed to the individual under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in the individual's capacity as a shareholder of a corporation having a valid election in effect under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987, and income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 1366(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the individual directly from the source from which realized by the corporation.

Subd. 3. Trusts and estates. A trust or estate, whether resident or nonresident, is subject to the return filing requirements under this chapter and the income of a trust or estate is subject to tax under this chapter to the extent that the income of the trust or estate is:

(1) allocable to this state under section 290.17, 290.191, or 290.20;

(2) taxed to the trust or estate under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a beneficiary of a trust or estate with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 662(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the trust or beneficiary estate directly from the source from which realized by the distributing estate;

(3) taxed to the trust or estate under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a beneficiary or grantor or other person treated as a substantial owner of a trust with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 652(b), 662(b), or 664(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the beneficiary trust or estate directly from the source from which realized by the distributing trust;

(4) taxed to the trust or estate under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a limited or general partner in a partnership with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 702(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the trust or estate directly from the source from which realized by the partnership; or

(5) taxed to the trust or estate under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a shareholder of a corporation having a valid election in effect under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987, and income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 1366(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the trust or estate directly from the source from which realized by the corporation.

Subd. 4. Partnerships. A partnership is not subject to tax under this chapter but

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is subject to the return filing requirements under this chapter and its partners are subject to tax under this chapter on their shares of partnership income to the extent that the income of the partnership is:

- (1) allocable to this state under section 290.17, 290.191, or 290.20;
- (2) taxed to the partnership under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a beneficiary of an estate with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 662(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the partnership directly from the source from which realized by the estate;
- (3) taxed to the partnership under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a beneficiary or grantor or other person treated as a substantial owner of a trust with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 652(b), 662(b), or 664(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the partnership directly from the source from which realized by the trust; or
- (4) taxed to the partnership under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a limited or general partner in a partnership with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 702(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the second tier partnership directly from the source from which realized by the first tier partnership.

Subd. 5. Corporations. A corporation having a valid election in effect under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987, is not subject to tax under this chapter, except as provided in section 290.9725, but its shareholders are, and it is subject to the return filing requirements. Corporations are subject to the return filing requirements and to tax under this chapter if the corporation so exercises its franchise as to engage in such contacts with this state as to cause part of the income of the corporation to be:

- (1) allocable to this state under section 290.17, 290.191, 290.20, 290.35, or 290.36;
- (2) taxed to the corporation under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a beneficiary of an estate with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 662(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the corporation directly from the source from which realized by the estate;
- (3) taxed to the corporation under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a beneficiary or grantor or other person treated as a substantial owner of a trust with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 652(b), 662(b), or 664(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the corporation directly from the source from which realized by the trust; or

(4) taxed to the corporation under the Internal Revenue Code of 1986, as amended through December 31, 1987, (or not taxed under the Internal Revenue Code by reason of its character but of a character which is taxable under this chapter) in its capacity as a limited or general partner in a partnership with income allocable to this state under section 290.17, 290.191, or 290.20 and the income, taking into account the income character provisions of section 702(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, would be allocable to this state under section 290.17, 290.191, or 290.20 if realized by the corporation directly from the source from which realized by the partnership.

History: 1987 c 268 art 1 s 22; 1988 c 719 art 3 s 12

290.015 MINIMUM CONTACTS REQUIRED FOR JURISDICTION TO TAX TRADE OR BUSINESS.

Subdivision 1. General rule. (a) Except as provided in subdivision 3, a person that conducts a trade or business that has a place of business in this state, regularly has employees or independent contractors conducting business activities on its behalf in this state, or owns or leases real property located in this state or tangible personal property located in this state as defined in section 290.191, subdivision 6, paragraph (e), is subject to the taxes imposed by this chapter.

(b) Except as provided in subdivision 3, a person that conducts a trade or business not described in paragraph (a) is subject to the taxes imposed by this chapter if the trade or business obtains or regularly solicits business from within this state, without regard to physical presence in this state.

(c) For purposes of paragraph (b), business from within this state includes, but is not limited to:

(1) sales of products or services of any kind or nature to customers in this state who receive the product or service in this state;

(2) sales of services which are performed from outside this state but the benefits of which are consumed in this state;

(3) transactions with customers in this state that involve intangible property and result in income flowing to the person from within this state as provided in section 290.191;

(4) leases of tangible personal property that is located in this state as defined in section 290.191, subdivision 6, paragraph (e);

(5) sales and leases of real property located in this state; and

(6) if a financial institution, deposits received from customers in this state.

(d) For purposes of paragraph (b), solicitation includes, but is not limited to:

(1) the distribution, by mail or otherwise, without regard to the state from which such distribution originated or in which the materials were prepared, of catalogs, periodicals, advertising flyers, or other written solicitations of business to customers in this state;

(2) display of advertisements on billboards or other outdoor advertising in this state;

(3) advertisements in newspapers published in this state;

(4) advertisements in trade journals or other periodicals, the circulation of which is primarily within this state;

(5) advertisements in a Minnesota edition of a national or regional publication or a limited regional edition of which this state is included of a broader regional or national publication which are not placed in other geographically defined editions of the same issue of the same publication;

(6) advertisements in regional or national publications in an edition which is not by its contents geographically targeted to Minnesota, but which is sold over the counter in Minnesota or by subscription to Minnesota residents;

(7) advertisements broadcast on a radio or television station located in Minnesota;

or

(8) any other solicitation by telegraph, telephone, computer data base, cable, optic, microwave, or other communication system.

Subd. 2. Presumption. (a) A person is presumed, subject to rebuttal, to be obtaining or regularly soliciting business from within this state if:

(1) it is a financial institution and it conducts activities described in subdivision 1, paragraph (b), without regard to transactions described in subdivision 3, with 20 or more persons within this state during any tax period; or

(2) it is a financial institution as defined in section 290.01, subdivision 4a, and the sum of its assets and the absolute value of its deposits attributable to sources within this state equals or exceeds \$5,000,000, with assets and deposits attributed to sources within this state by applying the principles established under section 290.191, except as provided in subdivision 3.

(b) A financial institution that (i) is not engaged in activities within this state under subdivision 1, paragraph (a), and (ii) does not satisfy the requirements of paragraph (a) is not subject to taxes imposed by this chapter.

Subd. 3. Exceptions. (a) A person is not subject to tax under this chapter if the person is engaged in the business of selling tangible personal property and taxation of that person under this chapter is precluded by Public Law Number 86-272, United States Code, title 15, sections 381 to 384 or would be so precluded except for the fact that the person stored tangible personal property in a state licensed facility under chapter 231.

(b) Ownership of an interest in the following types of property (including those contacts with this state reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is subject to tax under this chapter:

(1) an interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company, as those terms are defined in the Internal Revenue Code of 1986, as amended through December 31, 1987;

(2) an interest in a loan-backed, mortgage-backed, or receivable-backed security representing either: (i) ownership in a pool of promissory notes, mortgages, or receivables or certificates of interest or participation in such notes, mortgages, or receivables, or (ii) debt obligations or equity interests which provide for payments in relation to payments or reasonable projections of payments on the notes, mortgages, or receivables, and which are issued by a financial institution or by an entity substantially all of whose assets consist of promissory notes, mortgages, receivables, or interests in them;

(3) an interest in any assets described in section 290.191, subdivision 11, paragraphs (e) to (l), and in which the payment obligations embodied in such assets were solicited and entered into by persons independent and not acting on behalf of the owner;

(4) an interest in the right to service, or collect income from any assets described in section 290.191, subdivision 11, paragraphs (e) to (l), and in which the payment obligations embodied in such assets were solicited and entered into by persons independent and not acting on behalf of the owner;

(5) an interest of a person other than an individual, estate, or trust, in any intangible, tangible, real, or personal property acquired in satisfaction, whether in whole or in part, of any asset embodying a payment obligation which is in default, whether secured or unsecured, the ownership of an interest in which would be exempt under the preceding provisions of this subdivision, provided the property is disposed of within a reasonable period of time; or

(6) amounts held in escrow or trust accounts, pursuant to and in accordance with the terms of property described in this subdivision.

If the person is a member of the unitary group, paragraph (b) does not apply to an interest acquired from another member of the unitary group.

Subd. 4. Limitations. (a) This section does not subject a trade or business to any regulation, including any tax, of any local unit of government or subdivision of this state if the trade or business does not own or lease tangible or real property located within this state and has no employees or independent contractors present in this state to assist in the carrying on of the business.

(b) The purchase of tangible personal property or intangible property or services by a person that conducts a trade or business with the principal place of business outside of Minnesota (the "non-Minnesota person") from a person within Minnesota shall not be taken into account in determining whether the non-Minnesota person is subject to the taxes imposed by this chapter, except for services involving either the direct solicitation of Minnesota customers or relationships with Minnesota customers after sales are made.

(c) No contact with any Minnesota financial institution by any financial institution with its principal place of business outside Minnesota with respect to transactions described in subdivision 3, or with respect to deposits received from or by a Minnesota financial institution, shall be taken into account in determining whether such a financial institution is subject to the taxes imposed by this chapter. The fact of participation by a Minnesota financial institution in a transaction which also involves a borrower and a financial institution that conducts a trade or business with its principal place of business outside of Minnesota shall not be a factor in determining whether such financial institution is subject to the taxes imposed by this chapter. This paragraph does not apply to transactions between or among members of the same unitary group.

Subd. 5. Determination at entity level. Determinations under this section with respect to trades or businesses conducted by a partnership, trust, estate, or corporation with an election in effect under section 1362 of the Internal Revenue Code, or any other entity, the income of which is or may be taxed to its owners or beneficiaries must be made with respect to the entity carrying on the trade or business and not with respect to owners or beneficiaries of the trade or business, the taxability of which under this chapter must be determined under section 290.014.

History: 1987 c 268 art 1 s 23; 1988 c 719 art 2 s 15-18; art 3 s 12

290.02 FRANCHISE TAX ON CORPORATIONS MEASURED BY NET INCOME.

An annual franchise tax on the exercise of the corporate franchise to engage in contacts with this state that produce gross income attributable to sources within this state is imposed upon every corporation that so exercises its franchise during the taxable year.

Contacts within this state do not include transportation in interstate or foreign commerce, or both, by means of ships navigating within or through waters that are made international for navigation purposes by any treaty or agreement to which the United States is a party.

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

History: (2394-2) 1933 c 405 s 2; Ex1937 c 49 s 2; 1947 c 635 s 2; 1974 c 556 s 18; 1975 c 349 s 7; 1976 c 2 s 102; 1982 c 523 art 1 s 4; 1987 c 268 art 1 s 24

290.03 INCOME TAX; IMPOSITION, CLASSES OF TAXPAYERS.

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

- (1) Resident and nonresident individuals;
- (2) Estates of decedents, dying domiciled within or without this state;
- (3) Trusts (except those taxable as corporations) however created by residents or nonresidents or by domestic or foreign corporations.

History: (2394-3) 1933 c 405 s 3; Ex1937 c 49 s 3; 1941 c 550 s 1; 1945 c 410 s 1;

Ex1957 c 1 art 3; 1963 c 587 s 1; 1967 c 577 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 419 s 2; 1982 c 523 art 1 s 5; 1987 c 268 art 1 s 25

290.031 [Repealed, 1978 c 721 art 5 s 1]

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 1986, as amended through December 31, 1987, and that is subject to tax for such taxable year under section 402(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987.

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 1986, as amended through December 31, 1987, except that the initial separate tax shall be an amount equal to five times the tax which would be imposed by section 290.06, subdivision 2c, if the recipient was an unmarried individual, and the taxable net income was an amount equal to one-fifth 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 1986, as amended through December 31, 1987, to paragraph (1)(A) thereof shall instead be references to subdivision 1, and the excess, if any, of the subtraction base amount over federal taxable income for a qualified individual as provided under section 290.0802, subdivision 2.

Subd. 3. The tax imposed by this section shall not be applicable to a nonresident individual.

Subd. 4. [Repealed, 1981 c 343 s 42]

Subd. 5. [Repealed, 1983 c 342 art 1 s 44]

History: *1975 c 349 s 28; 1977 c 376 s 2,13; 1979 c 303 art 1 s 3,4; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 11; 1982 c 523 art 1 s 69; art 40 s 14; 1983 c 15 s 3; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; art 4 s 1; 1Sp1985 c 14 art 1 s 13; art 21 s 3,49; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 26,27; 1988 c 719 art 1 s 6; art 3 s 12*

290.04 LIABILITY FOR TAX.

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

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

History: *(2394-4) 1933 c 405 s 4; Ex1937 c 49 s 4; 1986 c 444*

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 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.

Subd. 2. Except as provided in subdivisions 1 and 3, organizations are exempted from taxation under this chapter if they are exempt from income taxation pursuant to Subchapter F of the Internal Revenue Code. Township mutual insurance companies, as defined in chapter 67A, and nonprofit health service plan corporations, as defined in chapter 62C, are subject to taxation under this chapter unless they are exempt from taxation under subchapter F of the Internal Revenue Code of 1986.

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.

Subd. 4. (a) Corporations, individuals, estates, trusts or organizations claiming exemption under the provisions of subdivision 2 shall furnish information as to their exempt status under the Internal Revenue Code.

(b) Such corporations, individuals, estates, trusts, and organizations shall file with the commissioner of revenue a copy of any annual report that is required to be filed with the Internal Revenue Service, no later than ten days after filing the same with the Internal Revenue Service. Any annual report required of a pension plan under sections 6057 to 6059 of the Internal Revenue Code of 1954, does not need to be filed with the commissioner.

Any person required to file a copy of a federal return pursuant to the preceding paragraph who willfully fails to file such return shall be guilty of a misdemeanor.

(c) In the event that the Internal Revenue Service revokes, cancels or suspends, in whole or part, the exempt status of any corporation, individual, estate, trust or organization referred to in clause (a), or if the amount of gross income, deductions, credits, items of tax preference or taxable income is changed or corrected by either the taxpayer or the Internal Revenue Service, or if the taxpayer consents to any extension of time for assessment of federal income taxes such corporation, individual, estate, trust or organization shall notify the commissioner in writing of such action within 90 days thereafter.

(d) The periods of limitations contained in section 290.56 shall apply whenever there has been any action referred to in clause (c), notwithstanding any period of limitations to the contrary.

Subd. 5. In the case of any failure to furnish annual report information at the time and in the manner prescribed by subdivision 4, clause (b), unless it is shown that such failure is due to reasonable cause, there shall be paid to the commissioner by the exempt organization a penalty of \$100 for each such failure. The penalty shall be immediately due and payable upon notice and demand by the commissioner and may be collected in the same manner as any delinquent income tax.

Subd. 6. The Internal Revenue Code referred to in any of the subdivisions of this section means the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 7. Notwithstanding section 290.61, any information required to be furnished to the commissioner of revenue pursuant to subdivisions 1 and 4 shall be open to public inspection at such times and in such places as the commissioner may prescribe. The commissioner is also authorized to publish a list of organizations exempt from taxation pursuant to this section. Nothing in this subdivision shall authorize the commissioner to disclose the name or address of any contributor to any organization which is or was so exempt, or which has applied for tax exempt status, or any other information which could not be disclosed under section 6104 of the Internal Revenue Code.

History: (2394-5) 1933 c 405 s 5; Ex1937 c 49 s 5; 1939 c 446 s 1,2; 1941 c 109 s 1; 1941 c 550 s 2; 1943 c 643 s 1; 1943 c 656 s 27; 1947 c 635 s 3; 1953 c 647 s 1; 1965 c 596 s 1; 1967 c 671 s 1; 1971 c 769 s 2; 1971 c 802 s 1; 1973 c 123 art 2 s 1 subd 2; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 343 s 2; 1Sp1981 c 4 art 1 s 133; 1982 c 523 art 1 s 6,7; art 40 s 14; 1983 c 207 s 7,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; art 2 s 8; 1985 c 229 s 1; 1Sp1985 c 14 art 1 s 14; art 21 s 49; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 28,29,126; 1988 c 719 art 3 s 12.

290.06 RATES OF TAX; CREDITS AGAINST TAX.

Subdivision 1. **Computation, corporations.** (a) The franchise tax imposed by this chapter upon corporations shall be computed by applying to their taxable income the rate of 9.5 percent adjusted as provided in paragraph (b).

(b) For taxable years beginning after December 31, 1989, the commissioner of revenue must adjust the rate provided in paragraph (a) as provided in this paragraph. By December 15, 1989, the commissioner shall prepare a forecast of revenues predicted to be raised for taxable years beginning in 1990 by the franchise tax on corporations under this chapter for taxable years beginning in 1990, including the tax under section 290.092, computed as if the tax were imposed under section 290.092, subdivisions 1 to 4, and the rate in effect in this subdivision were 9.5 percent. The commissioner shall adjust the rate provided in paragraph (a) so that the amount forecast to be raised by the franchise tax on corporations under this chapter, including the tax under section 290.092, subdivision 5, is equal to the amount of the forecast computed as if the tax under section 290.092, subdivisions 1 to 4, were in effect. The adjustment of the tax rate by the commissioner under this subdivision shall not be considered a "rule" and shall not be subject to the administrative procedure act contained in chapter 14.

Subd. 2. [Repealed, Ex1971 c 31 art 18 s 6]

Subd. 2a. [Repealed, Ex1967 c 32 art 14 s 12]

Subd. 2b. [Repealed, 1980 c 419 s 46]

Subd. 2c. **Schedules of rates for individuals, estates, and trusts.** (a) The income taxes imposed by this chapter upon married individuals filing joint returns and surviving spouses as defined in section 2(a) of the Internal Revenue Code of 1986 as amended through December 31, 1987, must be computed by applying to their taxable net income the following schedule of rates:

| | |
|-----------------------|---|
| if taxable income is: | the tax is: |
| not over \$19,000 | 6 percent |
| over \$19,000 | \$1,140 plus 8 percent of the excess over \$19,000 |

plus an amount computed using the following schedule of rates:

| | |
|--|--|
| if taxable income is: | the tax is: |
| over \$75,500, but not over \$165,000 | 0.5 percent of the excess over \$75,500 |
| over \$165,000 | \$447.50. |

Married individuals filing separate returns, estates, and trusts must compute their income tax by applying the above rates to their taxable income, except that the income brackets will be one-half of the above amounts.

(b) The income taxes imposed by this chapter upon unmarried individuals must be computed by applying to taxable net income the following schedule of rates:

| | |
|-----------------------|---|
| if taxable income is: | the tax is: |
| not over \$13,000 | 6 percent |
| over \$13,000 | \$780 plus 8 percent of the excess over \$13,000 |

plus an amount computed using the following schedule of rates:

| | |
|---|--|
| if taxable income is: | the tax is: |
| over \$42,700, but not over \$93,000 | 0.5 percent of the excess over \$42,700 |
| over \$93,000 | \$251.50. |

(c) The income taxes imposed by this chapter upon unmarried individuals qualifying as a head of household as defined in section 2(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, must be computed by applying to taxable net income the following schedule of rates:

| | |
|-----------------------|---|
| if taxable income is: | the tax is: |
| not over \$16,000 | 6 percent |
| over \$16,000 | \$960 plus 8 percent of the excess over \$16,000 |

plus an amount computed using the following schedule of rates:

| | |
|--|--|
| if taxable income is: | the tax is: |
| over \$64,300, but not over \$135,000 | 0.5 percent of the excess over \$64,300 |
| over \$135,000 | \$353.50. |

(d) 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.

(e) An individual who is not a Minnesota resident for the entire year must compute the individual's 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 source federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, as amended through December 31, 1987, after applying the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

(2) the denominator is the individual's federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, as amended through December 31, 1987, increased by the addition required for interest income from non-Minnesota state and municipal bonds under section 290.01, subdivision 19a, clause (1).

(f) Any individual who has income which is included in the computation of federal adjusted gross income but is not subject to tax by Minnesota other than income specifically allowed as a subtraction under section 290.01, subdivision 19b, shall compute the tax in the same manner described in paragraph (e). The numerator of the fraction under paragraph (e) is the individual's Minnesota source federal adjusted gross income reduced by the income not subject to Minnesota tax and the denominator is the federal adjusted gross income.

Subd. 2d. Inflation adjustment of brackets. (a) For taxable years beginning after December 31, 1990, the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed in subdivision 2c shall be adjusted for inflation by the percentage determined under paragraph (b). 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, 1987, and before January 1, 1991. 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.

(b) The commissioner shall adjust the rate brackets by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code of 1986, as amended through December 31, 1987, except that in section 1(f)(3)(B) the word "1989" shall be substituted for the word "1987." For 1991, the commissioner shall then determine the percent change from the 12 months ending on August 31, 1989, to the 12 months ending on August 31, 1990, and in each subsequent year, from the 12 months ending on August 31, 1989, to the 12 months ending on August 31 of the year preceding the taxable year. The determination of the commissioner pursuant to this subdivision shall not be considered a "rule" and shall not be subject to the administrative procedure 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.

Subd. 2e. [Repealed, 1984 c 502 art 2 s 17]

Subd. 2f. [Repealed, 1Sp1986 c 1 art 8 s 19]

Subd. 3. [Repealed, Ex1967 c 32 art 14 s 12]

Subd. 3a. [Repealed, 1980 c 419 s 46]

Subd. 3b. [Repealed, 1980 c 419 s 46]

Subd. 3c. [Repealed, 1982 c 523 art 1 s 72]

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

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

Subd. 3f. [Repealed, 1987 c 268 art 1 s 127]

Subd. 3g. [Repealed, 1987 c 268 art 1 s 127]

Subd. 4. [Repealed, Ex1971 c 31 art 6 s 2]

Subd. 5. [Expired]

Subd. 6. [Repealed, Ex1971 c 31 art 6 s 2]

Subd. 7. [Expired]

Subd. 8. [Repealed, Ex1967 c 32 art 2 s 1]

Subd. 9. [Repealed, 1983 c 342 art 1 s 44]

Subd. 9a. [Repealed, 1983 c 342 art 1 s 44]

Subd. 10. Computation of tax. In computing the dollar amount of items on the income tax return and accompanying schedules, such money items may be rounded off to the nearest whole dollar amount, disregarding amounts less than 50 cents and increasing amounts of 50 cents to 99 cents to the next highest dollar.

Subd. 11. [Repealed, 1987 c 268 art 1 s 127]

Subd. 12. [Repealed, 1979 c 303 art 1 s 23]

Subd. 13. [Repealed, 1984 c 502 art 14 s 20]

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

Subd. 15. [Repealed, 1Sp1986 c 1 art 3 s 21]

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]

Subd. 20. [Repealed, 1988 c 719 art 1 s 21]

Subd. 21. **Alternative minimum tax.** (a) A corporation is allowed a credit for alternative minimum tax previously paid for any taxable year in which the corporation has no tax liability under section 290.092, subdivision 1, and has an alternative minimum tax credit carryover from a previous year. The credit allowable in any taxable year shall be equal to the lesser of (1) the excess of the tax under this section for the taxable year over the amount computed under section 290.092, subdivision 1, clause (1), for the taxable year, or (2) the alternative minimum tax credit carryover to the taxable year.

(b) The tax imposed under section 290.092, subdivision 1, for any taxable year is an alternative minimum tax credit carryover to each of the five taxable years succeeding the taxable year. The entire amount of the alternative minimum tax credit must be carried to the earliest taxable year to which such amount may be carried. Any unused portion of the credit must be carried to the following taxable year. No credit may be carried to a taxable year more than five years after the taxable year in which the alternative minimum tax was paid.

Subd. 22. **Credit for taxes paid to another state.** (a) A taxpayer who is liable for taxes on or measured by net income to another state or province or territory of Canada, as provided in paragraphs (b) through (f), upon income allocated or apportioned to Minnesota, is entitled to a credit for the tax paid to another state or province or territory of Canada if the tax is actually paid in the taxable year or a subsequent taxable year. A taxpayer who is a resident of this state pursuant to section 290.01, subdivision 7a, clause (b), and who is subject to income tax as a resident in the state of the individual's domicile is not allowed this credit unless the state of domicile does not allow a similar credit.

(b) For an individual, estate, or trust, the credit is determined by multiplying the tax payable under this chapter by the ratio derived by dividing the income subject to tax in the other state or province or territory of Canada that is also subject to tax in Minnesota while a resident of Minnesota by the taxpayer's federal adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1986, as amended through December 31, 1987, to the extent the income is allocated or assigned to Minnesota under sections 290.081 and 290.17.

(c) If the taxpayer is an athletic team that apportions all of its income under section 290.17, subdivision 5, paragraph (a), the credit is determined by multiplying the tax payable under this chapter by the ratio derived from dividing the total net income subject to tax in the other state or province or territory of Canada by the taxpayer's Minnesota taxable income.

(d) The credit determined under paragraph (b) or (c) shall not exceed the amount of tax so paid to the other state or province or territory of Canada on the gross income earned within the other state or province or territory of Canada subject to tax under this chapter, nor shall the allowance of the credit reduce the taxes paid under this chapter to an amount less than what would be assessed if such income amount was excluded from taxable net income.

(e) In the case of the tax assessed on a lump sum distribution under section 290.032, the credit allowed under paragraph (a) is the tax assessed by the other state or province or territory of Canada on the lump sum distribution that is also subject to tax under section 290.032, and shall not exceed the tax assessed under section 290.032.

(f) If a Minnesota resident reported an item of income to Minnesota and is assessed tax in such other state or province or territory of Canada on that same income after the Minnesota statute of limitations has expired, the taxpayer shall receive a credit for that year under paragraph (a), notwithstanding any statute of limitations to the contrary. The claim for the credit must be submitted within one year from the date the taxes were paid to the other state or province or territory of Canada. The taxpayer must submit sufficient proof to show entitlement to a credit.

History: (2394-6) 1933 c 405 s 6; Ex1937 c 49 s 6; 1939 c 446 s 3; 1941 c 550 s 3; 1943 c 656 s 2; 1945 c 604 s 3; 1947 c 635 s 4; 1949 c 642 s 13; 1949 c 734 s 4,5; 1951 c 605 s 1,2; 1951 c 676 s 1; 1953 c 667 s 1,2; 1955 c 84 s 1; 1957 c 847 s 1; Ex1957 c 1 art 1 s 1; art 2 s 1; art 7 s 2; Ex1959 c 70 art 3 s 1-5; Ex1961 c 91 art 1 s 1,2; art 5 s 1,3,4; art 6 s 1; 1963 c 835 s 1; 1963 c 886 s 1-4; 1965 c 884 art 1 s 1-4; Ex1967 c 32 art 12 s 1; art 14 s 1-5; 1969 c 399 s 25,26; 1969 c 881 s 2-5; 1969 c 1000 s 1; 1971 c 35 s 1; 1971 c 794 s 1,2; Ex1971 c 2 s 1,2; Ex1971 c 31 art 6 s 1; art 18 s 1-4; 1973 c 22 s 1; 1973 c 582 s 3; 1973 c 650 art 22 s 1; 1974 c 470 s 35; 1974 c 556 s 3; 1975 c 349 s 8,9; 1975 c 355 s 1; 1975 c 437 art 9 s 2; 1976 c 2 s 103; 1977 c 250 s 1; 1977 c 386 s 2; 1977 c 423 art 1 s 4,5; 1978 c 463 s 106; 1978 c 721 art 2 s 1; art 3 s 1; art 4 s 1; art 7 s 1; art 8 s 1; art 9 s 1; 1979 c 59 s 7; 1979 c 303 art 1 s 5-10; art 4 s 1-3; art 5 s 1-3; art 10 s 6; 1980 c 509 s 113,114; 1980 c 607 art 1 s 3-7,32; art 9 s 1; 1981 c 29 art 7 s 30; 1981 c 60 s 2; 1981 c 178 s 12-16; 1981 c 343 s 3; 1981 c 356 s 192; 1Sp1981 c 1 art 1 s 1,2; 3Sp1981 c 2 art 3 s 3,4; 1982 c 424 s 130; 1982 c 523 art 1 s 8,9; art 10 s 1; art 29 s 1; art 40 s 14; 3Sp1982 c 1 art 5 s 3; 1983 c 15 s 4-7; 1983 c 207 s 43; 1983 c 216 art 2 s 6; 1983 c 289 s 115 subd 1; 1983 c 301 s 178; 1983 c 342 art 1 s 6,7,11,43; 1984 c 502 art 2 s 5,6; 1984 c 514 art 1 s 8; art 2 s 9-12,14; 1984 c 640 s 32; 1984 c 644 s 52-54; 1985 c 210 art 2 s 1; 1Sp1985 c 14 art 1 s 15-20; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 3 s 2; 1987 c 268 art 1 s 30-34; 1987 c 384 art 3 s 11; 1988 c 719 art 1 s 7,8; art 2 s 19,20; art 3 s 12

- 290.0601 [Repealed, 1977 c 423 art 2 s 20]
- 290.0602 [Repealed, 1977 c 423 art 2 s 20]
- 290.0603 [Repealed, 1977 c 423 art 2 s 20]
- 290.0604 [Repealed, 1977 c 423 art 2 s 20]
- 290.0605 [Repealed, 1977 c 423 art 2 s 20]
- 290.0606 [Repealed, 1977 c 423 art 2 s 20]
- 290.0607 [Repealed, 1973 c 650 art 16 s 4]
- 290.0608 [Repealed, 1977 c 423 art 2 s 20]
- 290.0609 [Repealed, 1977 c 423 art 2 s 20]
- 290.061 MS 1953 [Repealed, Ex1957 c 1 art 1 s 2]
- 290.061 MS 1976 [Repealed, 1977 c 423 art 2 s 20]
- 290.0611 [Repealed, 1977 c 423 art 2 s 20]
- 290.0612 [Repealed, 1977 c 423 art 2 s 20]
- 290.0613 [Repealed, Ex1971 c 31 art 8 s 8]
- 290.0614 [Repealed, 1977 c 423 art 2 s 20]
- 290.0615 [Repealed, 1977 c 423 art 2 s 20]
- 290.0616 [Repealed, 1977 c 423 art 2 s 20]
- 290.0617 [Repealed, 1973 c 650 art 16 s 4]
- 290.0618 [Repealed, 1977 c 423 art 2 s 20]
- 290.062 [Expired]
- 290.063 [Expired]
- 290.064 [Expired]
- 290.065 [Repealed, 1969 c 399 s 51]
- 290.066 [Repealed, 1977 c 423 art 2 s 20]

290.067 DEPENDENT CARE CREDIT.

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

In the case of nonresident or part-year resident, the credit determined under section 21 of the Internal Revenue Code must be allocated based on the ratio by which the earned income of the claimant and the claimant's spouse from Minnesota sources bears to the total earned income of the claimant and the claimant's spouse.

Subd. 2. **Limitations.** The credit for expenses incurred for the care of each dependent shall not exceed \$720 in any taxable year, and the total credit for all dependents of a claimant shall not exceed \$1,440 in a taxable year. The maximum total credit shall be reduced according to the amount of the income of the claimant and a spouse, if any, as follows:

income up to \$12,200, \$720 maximum for one dependent, \$1,440 for all dependents;

income over \$12,200, the maximum credit for one dependent shall be reduced by \$12 for every \$200 of additional income, \$24 for all dependents;

for income of \$24,001 and over, no credit shall be received.

The commissioner shall construct and make available to taxpayers tables showing the amount of the credit at various levels of income and expenses. The tables shall follow the schedule contained in this subdivision, except that the commissioner may graduate the transitions between expenses and income brackets.

Subd. 2a. **Income.** For purposes of this section, "income" means the sum of the following:

(1) the greater of federal adjusted gross income as defined in section 62 of the Internal Revenue Code or zero; and

(2) the sum of the following amounts to the extent not included in clause (1):

(i) all nontaxable income;

(ii) the amount of a passive activity loss that is not disallowed as a result of section 469, paragraph (i) or (1) of the Internal Revenue Code and the amount of passive activity loss carryover allowed under section 469(b) of the Internal Revenue Code;

(iii) an amount equal to the total of any discharge of qualified farm indebtedness of a solvent individual excluded from gross income under section 108(g) of the Internal Revenue Code;

(iv) cash public assistance and relief;

(v) any pension or annuity (including railroad retirement benefits, all payments received under the federal Social Security Act, supplemental security income, and veterans benefits), which was not exclusively funded by the claimant or spouse, or which was funded exclusively by the claimant or spouse and which funding payments were excluded from federal adjusted gross income in the years when the payments were made;

(vi) interest received from the federal or a state government or any instrumentality or political subdivision thereof;

(vii) workers' compensation;

(viii) nontaxable strike benefits;

(ix) the gross amounts of payments received in the nature of disability income or sick pay as a result of accident, sickness, or other disability, whether funded through insurance or otherwise;

(x) the ordinary income portion of a lump sum distribution under section 402(e) of the Internal Revenue Code; and

(xi) contributions made by the claimant to an individual retirement account,

including a qualified voluntary employee contribution; simplified employee pension plan; self-employed retirement plan; cash or deferred arrangement plan under section 401(k) of the Internal Revenue Code; or deferred compensation plan under section 457 of the Internal Revenue Code.

Subd. 3. Credit to be refundable. If the amount of credit which a claimant would be eligible to receive pursuant to this subdivision exceeds the claimant's tax liability under chapter 290, the excess amount of the credit shall be refunded to the claimant by the commissioner of revenue.

Subd. 4. Right to file claim. The right to file a claim under this section shall be personal to the claimant and shall not survive death, but such right may be exercised on behalf of a claimant by the claimant's legal guardian or attorney-in-fact. When a claimant dies after having filed a timely claim the amount thereof shall be disbursed to another member of the household as determined by the commissioner of revenue. If the claimant was the only member of a household, the claim may be paid to the claimant's personal representative, but if neither is appointed and qualified within two years of the filing of the claim, the amount of the claim shall escheat to the state.

Subd. 5. Appropriation. A sum sufficient to pay the claims for credit to be given pursuant to subdivisions 1 to 4 shall be appropriated annually to the commissioner of revenue from the general fund in the state treasury.

Subd. 6. For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1987.

History: 1977 c 423 art 7 s 1,2; 1979 c 303 art 1 s 11; 1980 c 607 art 1 s 11,12; 1981 c 343 s 4; 1Sp1981 c 2 s 22; 1982 c 523 art 40 s 3,14; 1983 c 342 art 1 s 12,13; 1984 c 514 art 2 s 15,16; 1Sp1985 c 14 art 21 s 4,49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 3 s 3; 1987 c 268 art 1 s 35-38; 1988 c 719 art 1 s 9; art 3 s 12

290.068 CREDIT FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.

Subdivision 1. Credit allowed. 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) 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) 2.5 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 41(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 41(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 41(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 41(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 1986, as amended through December 31, 1987.

Subd. 3. Limitation; 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 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.

Subd. 4. Partnerships. In the case of partnerships the credit shall be allocated in the same manner provided by section 41(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 41(f)(3) of the Internal Revenue Code, except that "December 31, 1980" shall be substituted for "June 30, 1980."

Subd. 6. Additional credit. (a) For taxable years beginning after December 31, 1986, and before January 1, 1988, in addition to the credit allowed by subdivision 1, a credit shall be allowed against the tax imposed by this chapter for the taxable year equal to five percent of the amount of qualified research expenses paid or incurred for qualified research performed by a Minnesota-domiciled corporation for or on behalf of one or more of its wholly-owned subsidiary corporations which has in effect during the taxable year a valid election under section 936 of the Internal Revenue Code, including any expenses paid or incurred that are attributable to a wholly-owned subsidiary corporation by reason of paragraph (h) of section 936 for purposes of determining each corporation's combined taxable income.

(b) The maximum credit allowed by clause (a) for the taxable year shall be the excess of

(1) the total amount of tax imposed by this chapter on all members of the unitary group for the taxable year, over

(2) the sum of (A) the total amount of tax which would be imposed on the unitary group, if the corporation or corporations with valid elections under section 936 of the Internal Revenue Code were excluded from the unitary group, plus (B) the tax, if any, which would be imposed on the corporation or corporations with valid elections under section 936 of the Internal Revenue Code without regard to the other members of the unitary group.

(c)(1) If the amount of the credit determined under clause (a) for any taxable year exceeds the limitation provided in clause (b), the excess shall be 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.

(2) The amount of the unused credit which may be added under subparagraph (1) for any preceding taxable year shall not exceed the amount by which the limitation provided by clause (b) for the taxable year exceeds the sum of

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- (i) the credit allowable under this subdivision for the taxable year, and
- (ii) the amounts, which, by reason of subparagraph (1), are added to the amount allowable for the taxable year and which are attributable to taxable years preceding the taxable year in which an excess credit arises.

History: *3Sp1981 c 2 art 3 s 6; 1982 c 523 art 1 s 70; art 9 s 1; 1983 c 15 s 8; 1983 c 207 s 8,9,43; 1983 c 342 art 1 s 43; art 8 s 12; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 1 s 21-23; art 21 s 5-7; 1Sp1986 c 1 art 3 s 4; 1987 c 268 art 1 s 39-44; 1988 c 719 art 3 s 12*

290.069 SMALL BUSINESS INVESTMENT CREDITS.

Subdivision 1. [Repealed, 1987 c 268 art 1 s 127]

Subd. 2. [Repealed, 1987 c 268 art 1 s 127]

Subd. 2a. **Recapture; technology transfer credit.** (a) A corporation which receives a tax reduction pursuant to Minnesota Statutes 1986, section 290.069, 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 Minnesota Statutes 1986, section 290.069, subdivision 2, paragraph (g).
- (5) The transferee grants an interest to the transferor in violation of Minnesota Statutes 1986, section 290.069, 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 |

Subd. 3. [Repealed, 1987 c 268 art 1 s 127]

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 |

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| 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 Minnesota Statutes 1986, section 290.069, 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. [Repealed, 1987 c 268 art 1 s 127]

Subd. 6. [Repealed, 1987 c 268 art 1 s 127]

Subd. 7. [Repealed, 1987 c 268 art 1 s 127]

History: 1983 c 207 s 43; 1983 c 289 s 115 subd 1; 1983 c 342 art 1 s 43; art 8 s 13; 1984 c 502 art 5 s 5-12; 1984 c 514 art 1 s 8; 1985 c 210 art 2 s 2; 1Sp1985 c 14 art 1 s 24-30; art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 45,46.

290.07 NET INCOME; COMPUTATION, ACCOUNTING PERIOD.

Subdivision 1. Annual accounting period. Net income and taxable net income shall be computed upon the basis of the taxpayer's annual accounting period. If a taxpayer has no annual accounting period, or has one other than a fiscal year, as heretofore defined, the net income and taxable net income shall be computed on the basis of the calendar year. Taxpayers shall employ the same accounting period on which they report, or would be required to report, their net income under the Internal Revenue Code. The commissioner shall provide by rule for the determination of the accounting period for taxpayers who file a combined report under section 290.34, subdivision 2, when members of the group use different accounting periods for federal income tax purposes. Unless the taxpayer changes its accounting period for federal purposes, the due date of the return is not changed.

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

Subd. 2. Accounting methods. Except as specifically provided to the contrary by this chapter, net income and taxable net income shall be computed in accordance with the method of accounting regularly employed in keeping the taxpayer's books. If no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this chapter, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly and fairly reflect income and the income taxable under this chapter.

Except as otherwise expressly provided in this chapter, a taxpayer who changes the method of accounting for regularly computing the taxpayer's income in keeping books shall, before computing net income and taxable net income under the new method, secure the consent of the commissioner.

Subd. 3. [Repealed, 1988 c 719 art 3 s 11]

Subd. 4. **Refunded income.** If (a) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item, and (b) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item, and (c) the amount of such deduction exceeds \$3,000, then the tax imposed by this chapter for the taxable year shall be the lesser of the following: (d) the tax for the taxable year computed with such deduction; or (e) an amount equal to (1) the tax for the taxable year computed without such deduction, minus (2) the decrease in tax under this chapter for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

If the decrease in tax ascertained under part (e) (2) of the preceding paragraph exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year. The preceding paragraph does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments made by a regulated public utility (as defined in section 7701(a)(33) of the Internal Revenue Code of 1986 as amended through December 31, 1987 without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the government, political subdivision, agency, or instrumentality referred to in such section.

Subd. 5. [Repealed, 1987 c 268 art 1 s 127]

Subd. 5a. [Repealed, 1983 c 15 s 33]

Subd. 6. [Repealed, 1988 c 719 art 3 s 11]

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 1986, as amended through December 31, 1987, shall determine the taxable year for which a deduction or credit may be taken.

History: (2394-9) 1933 c 405 s 9; 1939 c 446 s 4; 1945 c 604 s 4,5; 1947 c 635 s 5; 1955 c 426 s 1; 1957 c 621 s 10; 1957 c 772 s 1; 1961 c 507 s 1; 1965 c 488 s 1; 1965 c 489 s 1; 1971 c 761 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 419 s 3; 1980 c 607 art 1 s 32; 1981 c 60 s 3,27; 1981 c 178 s 17; 1982 c 523 art 40 s 14; 1983 c 207 s 43; 1983 c 342 art 1 s 14,43; 1984 c 514-art 1 s 8; 1985 c 248 s 70; 1Sp1985 c 14 art 21 s 8,9,49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 126; 1988 c 719 art 3 s 12

290.071 [Repealed, 1987 c 268 art 1 s 127]

290.072 [Repealed, 1975 c 349 s 31]

290.073 [Repealed, 1987 c 268 art 1 s 127]

290.074 [Repealed, 1947 c 635 s 21]

290.075 [Repealed, 1987 c 268 art 1 s 127]

290.076 [Repealed, 1981 c 178 s 119]

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290.077 Subdivision 1. [Repealed, 1988 c 719 art 1 s 21]

Subd. 2. [Repealed, 1983 c 342 art 1 s 44]

Subd. 3. [Repealed, 1987 c 268 art 1 s 127]

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

290.078 [Repealed, 1965 c 677 s 2]

290.0781 [Repealed, 1982 c 523 art 1 s 72]

290.079 [Repealed, 1987 c 268 art 1 s 127]

290.08 [Repealed, 1987 c 268 art 1 s 127]

290.0801 [Repealed, 1975 c 349 s 31]

290.0802 SUBTRACTION FOR THE ELDERLY AND DISABLED.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given.

(a) "Adjusted gross income" means federal adjusted gross income as used in section 22(d) of the Internal Revenue Code for the taxable year plus the ordinary income portion of a lump sum distribution as defined in section 407(e) of the Internal Revenue Code.

(b) "Disability income" means disability income as defined in section 22(c)(2)(B)(iii) of the Internal Revenue Code.

(c) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1987.

(d) "Nontaxable retirement and disability benefits" means the amount of pension, annuity, or disability benefits that would be included in the reduction under section 22(c)(3) of the Internal Revenue Code, but excluding tier one railroad retirement benefits.

(e) "Qualified individual" means a qualified individual as defined in section 22(b) of the Internal Revenue Code.

Subd. 2. **Subtraction.** (a) A qualified individual is allowed a subtraction from federal taxable income equal to the lesser of federal taxable income or the individual's subtraction base amount. The excess of the subtraction base amount over federal taxable income may be used to reduce the amount of a lump sum distribution subject to tax under section 290.032.

(b)(1) The initial subtraction base amount equals

(i) \$10,000 for a married taxpayer filing a joint return if a spouse is a qualified individual,

(ii) \$8,000 for a single taxpayer, and

(iii) \$5,000 for a married taxpayer filing a separate federal return.

(2) The qualified individual's initial subtraction base amount, then, must be reduced by the sum of nontaxable retirement and disability benefits and one-half of the amount of adjusted gross income in excess of the following thresholds:

(i) \$15,000 for a married taxpayer filing a joint return if both spouses are qualified individuals,

(ii) \$12,000 for a single taxpayer or for a married couple filing a joint return if only one spouse is a qualified individual, and

(iii) \$7,500 for a married taxpayer filing a separate federal return.

(3) In the case of a qualified individual who is under the age of 65, the maximum amount of the subtraction base may not exceed the taxpayer's disability income.

(4) The resulting amount is the subtraction base amount.

Subd. 3. **Restrictions; married couples.** Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the subtraction under subdivision 2 is allowable only if the taxpayers file joint federal and state income tax returns for the taxable year.

History: 1988 c 719 art 1 s 10

290.081 INCOME OF NONRESIDENTS, RECIPROCITY.

(a) The compensation received for the performance of personal or professional services within this state by an individual whose residence, place of abode, and place customarily returned to at least once a month is in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein.

(b) When it is deemed to be in the best interests of the people of this state, the commissioner may determine that the provisions of clause (a) shall not apply. As long as the provisions of clause (a) apply between Minnesota and Wisconsin, the provisions of clause (a) shall apply to any individual who is domiciled in Wisconsin.

(c) For the purposes of clause (a), whenever the Wisconsin tax on Minnesota residents which would have been paid Wisconsin without clause (a) exceeds the Minnesota tax on Wisconsin residents which would have been paid Minnesota without clause (a), or vice versa, then the state with the net revenue loss resulting from clause (a) shall receive from the other state the amount of such loss. This provision shall be effective for all years beginning after December 31, 1972. The data used for computing the loss to either state shall be determined on or before September 30 of the year following the close of the previous calendar year.

Interest shall be payable on all delinquent balances relating to taxable years beginning after December 31, 1977. The commissioner of revenue is authorized to enter into agreements with the state of Wisconsin specifying the reciprocity payment due date, conditions constituting delinquency, interest rates, and a method for computing interest due on any delinquent amounts.

If an agreement cannot be reached as to the amount of the loss, the commissioner of revenue and the taxing official of the state of Wisconsin shall each appoint a member of a board of arbitration and these members shall appoint the third member of the board. The board shall select one of its members as chair. Such board may administer oaths, take testimony, subpoena witnesses, and require their attendance, require the production of books, papers and documents, and hold hearings at such places as are deemed necessary. The board shall then make a determination as to the amount to be paid the other state which determination shall be final and conclusive.

Notwithstanding the provisions of section 290.61, the commissioner may furnish copies of returns, reports, or other information to the taxing official of the state of Wisconsin, a member of the board of arbitration, or a consultant under joint contract with the states of Minnesota and Wisconsin for the purpose of making a determination as to the amount to be paid the other state under the provisions of this section. Prior to the release of any information under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that the person will protect the confidentiality of the returns and information revealed thereby to the extent that it is protected under the laws of the state of Minnesota.

History: 1941 c 429; 1943 c 656 s 19; 1959 c 10 s 1; 1961 c 213 art 3 s 1; 1967 c 42 s 1; 1973 c 582 s 3; 1973 c 650 art 6 s 1; 1977 c 387 s 1; 1977 c 423 art 1 s 7; 1979 c 303 art 1 s 13; 1980 c 607 art 1 s 9; 1981 c 178 s 25; 1982 c 523 art 1 s 12; art 28 s 1; 1983 c 15 s 11; 1985 c 248 s 70; 1986 c 444; 1987 c 268 art 1 s 48; 1988 c 719 art 1 s 11

290.082 [Repealed, 1987 c 268 art 9 s 43]

290.085 [Repealed, 1987 c 268 art 1 s 127]

290.086 [Repealed, 1980 c 419 s 46]

290.087 [Repealed, 1980 c 419 s 46]

290.088 [Repealed, 1987 c 268 art 1 s 127]

290.089 [Repealed, 1987 c 268 art 1 s 127]

290.09 [Repealed, 1987 c 268 art 1 s 127]

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 six 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 alternative minimum taxable income as defined in section 55(b)(2) of the Internal Revenue Code;

(2) the taxpayer's itemized deductions allowed in computing federal alternative minimum taxable income, but excluding the portion of the charitable contribution deduction that constitutes an item of tax preference under section 57(a)(6) of the Internal Revenue Code;

(3) to the extent not included in federal alternative minimum taxable income, the amount of interest income as provided by section 290.01, subdivision 19a, clause (1); less the sum of

(i) interest income as defined in section 290.01, subdivision 19b, clause (1);

(ii) an overpayment of state income tax as provided by section 290.01, subdivision 19b, clause (2); and

(iii) the amount of investment interest paid or accrued within the taxable year on indebtedness to the extent that the amount does not exceed net investment income, as defined in section 163(d)(4) of the Internal Revenue Code. Interest does not include amounts deducted in computing federal adjusted gross income.

In the case of an estate or trust, alternative minimum taxable income must be computed as provided in section 59(c) of the Internal Revenue Code.

(b) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1987.

(c) "Investment interest" means investment interest as defined in section 163(d)(3) of the Internal Revenue Code.

(d) "Regular tax" means the tax that would be imposed under this chapter (without regard to this section and section 290.032), 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 the exemption determined under section 55(d) of the Internal Revenue Code, except that alternative minimum taxable income as determined under this section must be substituted in the computation of the phase out under section 55(d)(3).

Subd. 4. **Part year residents; estates and trusts.** (a) An individual who is not a Minnesota resident for the entire year must compute alternative minimum tax liability using a regular tax liability determined under section 290.06, subdivision 2c, paragraph (e), 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 (e).

(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 59(g) 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)(1).

History: 1977 c 423 art 1 s 14; 1978 c 767 s 17; 1979 c 303 art 1 s 15; 1980 c 607 art 1 s 15; 1981 c 60 s 11; 3Sp1981 c 2 art 3 s 9; 1982 c 523 art 1 s 17; art 40 s 6,14; 1983 c 207 s 13; 1984 c 514 art 2 s 20; 1Sp1985 c 14 art 1 s 37; 1Sp1985 c 16 art 2 s 28; 1986 c 398 art 21 s 3; 1986 c 444; 1Sp1986 c 1 art 1 s 4; art 3 s 6; 1987 c 268 art 1 s 49-53; 1988 c 719 art 3 s 12

290.092 ALTERNATIVE MINIMUM TAX FOR CORPORATIONS.

Subdivision 1. **Imposition of tax.** For taxable years beginning after December 31, 1986, and before January 1, 1990, in addition to the taxes computed under this chapter without regard to this section, the franchise tax imposed on corporations includes a tax equal to the excess, if any, of:

- (1) .001 multiplied by the alternative minimum tax base, over
- (2) the amount of tax computed under this chapter without regard to this section.

Subd. 2. **Exemptions.** Corporations subject to tax under sections 290.05, subdivision 3; or 60A.15, subdivision 1 and 290.35; real estate investment trusts; regulated investment companies; cooperatives taxable under subchapter T of the Internal Revenue Code of 1986 or organized under chapter 308 or a similar law of another state; and entities having a valid election in effect under section 1362 or 860D(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, are not subject to the tax imposed in subdivision 1 or subdivision 5.

Subd. 3. **Alternative minimum tax base.** The alternative minimum tax base equals the sum of:

- (1) the total amount of Minnesota sales or receipts;
- (2) the amount of the taxpayer's total Minnesota property; and
- (3) the taxpayer's total Minnesota payrolls;

less the exemption amount, if any.

Subd. 4. **Definitions.** (a) "Minnesota sales or receipts" means the total sales apportioned to Minnesota pursuant to section 290.191, subdivision 5, the total receipts attributed to Minnesota pursuant to section 290.191, subdivisions 6 to 8, and/or the total sales or receipts apportioned or attributed to Minnesota pursuant to any other apportionment formula applicable to the taxpayer.

(b) "Minnesota property" means total Minnesota tangible property as provided in section 290.191, subdivisions 9 to 11, and any other tangible property located in Minnesota except as provided in subdivision 4a. Intangible property shall not be included in Minnesota property for purposes of this section. Taxpayers who do not utilize tangible property to apportion income shall nevertheless include Minnesota property for purposes of this section. On a return for a short taxable year, the amount of Minnesota property owned, as determined under section 290.191, shall be included in Minnesota property based on a fraction in which the numerator is the number of days in the short taxable year and the denominator is 365.

(c) "Minnesota payrolls" means total Minnesota payrolls as provided in section 290.191, subdivision 12, except as provided in subdivision 4a. Taxpayers who do not utilize payrolls to apportion income shall nevertheless include Minnesota payrolls for purposes of this section.

(d) The "exemption amount" equals the lesser of (1) the sum of the taxpayer's Minnesota sales or receipts, property, and payrolls, as defined in this section, or (2) \$5,000,000 reduced by one-half of the amount of the taxpayer's total sales and receipts, property, and payrolls, as defined in this section, in excess of \$10,000,000. In the case of a unitary group, the exemption amount equals the lesser of (1) the sum of the unitary group's Minnesota sales or receipts, property, and payrolls or (2) \$5,000,000 reduced

by one-half of the unitary group's total sales or receipts, property, and payrolls in excess of \$10,000,000. Each member of a unitary group may use a portion of the unitary group's exemption amount based on a fraction, the numerator of which is the sum of the taxpayer's Minnesota sales or receipts, property, and payrolls and the denominator is the sum of the Minnesota sales or receipts, property, and payrolls of all unitary members subject to the taxes imposed by this chapter. Total sales and receipts, property, and payroll means the total determined under section 290.191 as the denominator of the apportionment formula. For purposes of this section, taxpayers who use an apportionment formula that does not include sales or receipts, property, and payrolls shall, nevertheless, use those amounts as defined in section 290.191, subdivisions 5 to 12. On a return for a short taxable year, the amount of total property owned, as determined under section 290.191, shall be included in Minnesota property based on a fraction in which the numerator is the number of days in the short taxable year and the denominator is 365. In the case of a unitary business, the exemption amount must reflect the factors of all businesses included in the unitary group as defined in section 290.17, subdivision 4. A corporation that has as its sole or primary business activity (1) the providing of professional services, as defined in section 319A.02; (2) operation as a financial institution, as defined in section 290.01, subdivision 4a; (3) sales or management of real estate; or (4) operation as an insurance agency, as defined in section 60A.02, does not have an exemption amount.

Subd. 4a. New business exclusion. For the first five taxable years during which a corporation is subject to taxation under this chapter, the amount of its Minnesota property and payrolls must be excluded from the alternative minimum tax base unless it is disqualified in this subdivision. A corporation is considered subject to taxation under this chapter if it would be subject to Minnesota's jurisdiction to tax as provided in section 290.015, before claiming this exclusion. The following does not qualify for this exclusion:

(1) a corporation that is a member of a unitary group that includes at least one business that does not qualify for this exclusion;

(2) any corporation organized under the laws of this state or certified to do business within this state at least five taxable years before the taxable year in which this exclusion is claimed;

(3) corporations created by: reorganizations, as defined in section 368 of the Internal Revenue Code of 1986, as amended through December 31, 1987; or split-ups, split-offs, or spin-offs, as described in section 355 of the Internal Revenue Code of 1986, as amended through December 31, 1987; or the transfer or acquisition, whether directly or indirectly, of assets which constitute a trade or business, including stock purchases under section 338 of the Internal Revenue Code of 1986, as amended through December 31, 1987, where the surviving, newly formed, or acquiring corporation conducts substantially the same activities as the predecessor corporation, regardless of whether or not the survivor corporation also conducts additional activities, and the predecessor corporation would not otherwise qualify for this exclusion if it had continued to conduct those activities;

(4) any change in identity or form of business where the original business entity would have been subject to Minnesota's taxing jurisdiction, as provided in section 290.015, at least five taxable years before the taxable year in which this exclusion is claimed;

(5) a corporation, the primary business activity of which is the providing of professional services as defined in section 319A.02; operation as a financial institution, as defined in section 290.01, subdivision 4a; sales or management of real estate; or operation as an insurance agency, as defined in section 60A.03; or

(6) a corporation the affairs of which the commissioner finds were arranged as they were primarily to reduce taxes by qualifying as a new business under this subdivision.

Subd. 5. Imposition of tax after 1989. For taxable years beginning after December 31, 1989, in addition to the taxes computed under this chapter, the franchise tax imposed on corporations includes a tax equal to 40 percent of the tax imposed upon

the corporation under section 55(a) of the Internal Revenue Code of 1986, as amended through December 31, 1987, apportioned to Minnesota under section 290.191. In computing the amount of the liability under section 55(a) of the Internal Revenue Code of 1986, the regular federal tax liability under section 55(a)(2) of the Internal Revenue Code of 1986, must be determined using federal taxable income as modified by sections 290.01, subdivisions 19c and 19d, 290.095, and 290.21, and alternative minimum taxable income under section 56 of the Internal Revenue Code of 1986 must be computed as if the section 290.095 restrictions on net operating losses applied.

Subd. 6. Credits. In computing the tax under this section, the following credits are allowed:

- (1) the enterprise zone credits allowed by section 273.1314, subdivision 9;
- (2) the credits for estimated taxes paid; and
- (3) the research and development credit allowed by section 290.068.

History: 1987 c 268 art 1 s 54; 1988 c 719 art 2 s 21-24; art 3 s 12

290.093 TAX COMPUTATION FOR MUTUAL SAVINGS BANKS CONDUCTING LIFE INSURANCE BUSINESS.

Mutual savings banks as defined in section 594 of the Internal Revenue Code of 1986, as amended through December 31, 1987, are subject to a tax consisting of the sum of the taxes determined under clauses (1) and (2):

(1) a tax computed on the taxable income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section did not apply; and

(2) a tax computed on the income of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to the department computed in the manner provided in section 290.35 and at the rate provided in section 290.06.

This section applies only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 816 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

History: 1987 c 268 art 1 s 55; 1988 c 719 art 3 s 12

290.095 OPERATING LOSS DEDUCTION.

Subdivision 1. Allowance of deduction. (a) There shall be allowed as a deduction for the taxable year the amount of any net operating loss deduction as provided in section 172 of the Internal Revenue Code of 1986, as amended through December 31, 1987, subject to the limitations and modifications provided in this section.

(b) A net operating loss deduction shall be available under this section only to corporate taxpayers except that subdivisions 7, 9, and 11 hereof apply only to individuals, estates, and trusts.

(c) In the case of a regulated investment company or fund thereof, as defined in section 851(a) or 851(q) of the Internal Revenue code of 1986, as amended through December 31, 1987, the deduction provided by this section shall not be allowed.

Subd. 2. Defined and limited. (a) The term "net operating loss" as used in this section shall mean a net operating loss as defined in section 172(c) of the Internal Revenue Code of 1986, as amended through December 31, 1987, with the modifications specified in subdivision 4. The deductions provided in section 290.21 and the modification provided in section 290.01, subdivision 19d, clause (11), cannot be used in the determination of a net operating loss.

(b) The term "net operating loss deduction" as used in this section means the aggregate of the net operating loss carryovers to the taxable year, computed in accordance with subdivision 3. The provisions of section 172(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, relating to the carryback of net operating losses, do not apply.

Subd. 3. Carryover. (a) A net operating loss incurred in a taxable year: (i) beginning after December 31, 1986, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss; (ii) beginning before January 1, 1987, shall be a net operating loss carryover to each of the five taxable years following the taxable year of such loss subject to the provisions of Minnesota Statutes 1986, section 290.095; and (iii) beginning before January 1, 1987, shall be a net operating loss carryback to each of the three taxable years preceding the loss year subject to the provisions of Minnesota Statutes 1986, section 290.095.

(b) The entire amount of the net operating loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable net income, adjusted by the modifications specified in subdivision 4, for each of the taxable years to which such loss may be carried.

(c) Where a corporation does business both within and without Minnesota, and apportions its income under the provisions of section 290.191, the net operating loss deduction incurred in any taxable year shall be allowed to the extent of the apportionment ratio of the loss year.

(d) No additional net operating loss deduction is allowed in a subsequent taxable year for the portion of a net operating loss deduction incurred in any taxable year used to offset Minnesota income in a year in which the taxpayer is subject to the alternative minimum tax in section 290.092.

(e) The provisions of sections 381, 382, and 384 of the Internal Revenue Code of 1986, as amended through December 31, 1987, apply to carryovers in certain corporate acquisitions and special limitations on net operating loss carryovers.

Subd. 4. Computation and modifications. The following modifications shall be made in computing a net operating loss in any taxable year and also in computing the taxable net income for any taxable year before a net operating loss deduction shall be allowed:

(a) No deduction shall be allowed for or with respect to losses connected with income producing activities if the income therefrom would not be required to be either assignable to this state or included in computing the taxpayer's taxable net income.

(b) A net operating loss deduction shall not be allowed.

(c) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets.

(d) Renegotiation of profits for a prior taxable year under the renegotiation laws of the United States of America, including renegotiation of the profits with a subcontractor, shall not enter into the computation.

(e) Federal income and excess profits taxes shall not be allowed as a deduction.

Subd. 5. Return covering less than 12 months. Wherever, under the provisions of this chapter, any taxpayer is required or permitted to make a return for a period of less than 12 months, such period shall be deemed a taxable year in the application of the provisions of this section.

Subd. 6. [Repealed, 1980 c 419 s 46]

Subd. 7. Tentative carryback adjustments. (a) Application for adjustment. An individual, estate or trust may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a loss 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, 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;
- (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 the commissioner 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 on finding that it contains errors of computation which the commissioner deems cannot be corrected by the commissioner 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 11; capital loss carrybacks as provided in section 290.01, subdivisions 19, 19a, and 19b; and to any other carrybacks which may be provided in this chapter.

Subd. 8. [Repealed, 1987 c 268 art 1 s 127]

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; 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 following the end of the taxable year of the net operating loss which results in such carryback, plus any extension of time granted for filing the return, but only if the return was filed within the extended time. 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. [Repealed, 1987 c 268 art 1 s 127]

Subd. 11. **Carryback or carryover adjustments.** (a) For individuals, 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, provided that, notwithstanding any other provision, estates and trusts must apply the following adjustments to the amount of the net operating loss that may be carried back or carried over:

- (1) Nonassignable income or losses as required by section 290.17.
- (2) Deductions not allocable to Minnesota under section 290.17.
- (b) 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 taxable income provided that trusts and estates must apply the following modifications:

(1) 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.

(2) 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. For estates and trusts, 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 (b) less the amount applied in the earlier taxable year(s). No additional net operating loss carryback or carryover shall be allowed to estates and trusts if the entire amount has been used to offset Minnesota income in a year earlier than was possible on the federal return. However, if a net operating loss carryback or carryover was allowed to offset federal income in a year earlier than was possible on the Minnesota return, an estate or trust shall still be allowed to offset Minnesota income but only if the loss was assignable to Minnesota in the year the loss occurred.

Subd. 12. Unitary group; carryback; carryforward. A taxpayer may elect a net operating loss carryback to each of the three taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the five taxable years following the taxable year of the loss, notwithstanding subdivision 3, clause (a). The net operating loss carryback and carryover allowed under this subdivision is limited to the part of the net operating loss attributable to the deduction allowed for bad debts under section 166(a) of the Internal Revenue Code of 1986, as amended through December 31, 1987. The part of the net operating loss for any taxable year that is attributable to the deduction allowed for bad debts is the excess of the net operating loss for the taxable year, over the net operating loss for the taxable year determined without regard to the amount allowed as a deduction for bad debts for the taxable year. In applying the provisions of subdivision 3, clause (b), the part of the net operating loss for the loss year that is attributable to the deduction allowed for bad debts is considered a separate net operating loss for the year to be applied before the other part of the net operating loss. This subdivision applies only to taxpayers where a member of the unitary group meets the definition found in section 585(c)(2)(A) of the Internal Revenue Code of 1986, as amended through December 31, 1987, and includes all corporations included in the unitary group and required to be included on a combined report. A refund of tax that is the result of a net operating loss carryback under this section must be paid after two years but before two years and 30 days after the claim for refund was filed.

History: 1945 c 604 s 28; 1957 c 769 s 2; Ex1957 c 1 art 6 s 2; Ex1959 c 70 art 3 s 8; 1961 c 259 s 1,2; 1963 c 355 s 5-7; 1965 c 402 s 1,2; 1967 c 597 s 1-3; 1971 c 769 s 2; 1973 c 74 s 1-4; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1979 c 303 art 1 s 16; 1980 c 419 s 13,14; 1980 c 607 art 1 s 16,17,32; 1981 c 60 s 27; 1981 c 178 s 38; 1981 c 343 s 6-8; 1982 c 523 art 1 s 18,19; art 29 s 2; art 40 s 7,14; 1983 c 15 s 15; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; art 2 s 21; 1985 c 210 art 2 s 3; 1985 c 248 s 70; 1Sp1985 c 14 art 1 s 38-40; art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 3 s 7,8; 1987 c 268 art 1 s 56-62; 1988 c 719 art 2 s 25-28; art 3 s 4,12

NOTE: Subdivision 12, as added by Laws 1988, chapter 719, article 2, section 28, is repealed effective for taxable years beginning after December 31, 1993. See Laws 1988, chapter 719, article 2, section 57.

290.10 NONDEDUCTIBLE ITEMS.

Except as provided in section 290.17, subdivision 4, paragraph (i), in computing the net income of a corporation no deduction shall in any case be allowed for 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 corporations 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, and the provisions of section 298.031, this shall not prevent the deduction of expenses and other items to the extent that the expenses and other items are allowable under this

chapter 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.

History: (2394-14) 1933 c 405 s 14; Ex1937 c 49 s 11; 1939 c 446 s 7; 1941 c 550 s 8; 1947 c 635 s 7; 1949 c 541 s 2; 1955 c 83 s 1; 1961 c 504 s 1; 1969 c 610 s 1; 1971 c 432 s 1; 1971 c 769 s 2; 1973 c 279 s 1; 1973 c 711 s 3; 1975 c 349 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 39; 1Sp1981 c 3 s 3; 1982 c 523 art 1 s 20; art 40 s 14; 1983 c 207 s 14,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 3,8; 1984 c 655 art 1 s 49; 1Sp1985 c 14 art 1 s 41; 1Sp1986 c 1 art 1 s 9; art 3 s 9; 1987 c 268 art 1 s 63; 1988 c 719 art 2 s 29

NOTE: This section, as amended by Laws 1988, chapter 719, article 2, section 29, in its reference to section 290.17, subdivision 4, paragraph (i), is effective for taxable years beginning after December 31, 1988, in its application to income described in section 290.01, subdivision 19d, clause (11), for taxable years beginning after December 31, 1989, in its application to other income of 936 corporations, and for taxable years beginning after December 31, 1990, in its application to other income of foreign operating corporations. See Laws 1988, chapter 719, article 2, section 57.

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

290.11 [Repealed, 1988 c 719 art 3 s 11]

290.12 [Repealed, 1988 c 719 art 3 s 11]

290.13 [Repealed, 1987 c 268 art 1 s 127]

290.131 [Repealed, 1988 c 719 art 3 s 11]

290.132 [Repealed, 1988 c 719 art 3 s 11]

290.133 [Repealed, 1988 c 719 art 3 s 11]

290.134 [Repealed, 1988 c 719 art 3 s 11]

290.135 [Repealed, 1988 c 719 art 3 s 11]

290.136 [Repealed, 1988 c 719 art 3 s 11]

290.137 [Repealed, 1981 c 60 s 29]

290.138 [Repealed, 1988 c 719 art 3 s 11]

290.139 [Repealed, 1987 c 268 art 1 s 127]

290.14 [Repealed, 1988 c 719 art 3 s 11]

290.15 [Repealed, 1987 c 268 art 1 s 127]

290.16 [Repealed, 1987 c 268 art 1 s 127]

290.165 [Repealed, 1987 c 268 art 1 s 127]

290.17 GROSS INCOME, ALLOCATION TO STATE.

Subdivision 1. Scope of allocation rules. (a) The income of resident individuals is not subject to allocation outside this state. The allocation rules apply to nonresident individuals, estates, trusts, nonresident partners of partnerships, nonresident shareholders of corporations having a valid election in effect under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987, and all corporations not having such an election in effect. If a partnership or corporation would not otherwise be subject to the allocation rules, but conducts a trade or business that is part of a unitary business involving another legal entity that is subject to the allocation rules, the partnership or corporation is subject to the allocation rules.

(b) Expenses, losses, and other deductions (referred to collectively in this paragraph as "deductions") must be allocated along with the item or class of gross income to which they are definitely related for purposes of assignment under this section or apportionment under section 290.191, 290.20, 290.35, or 290.36. Deductions not definitely related to any item or class of gross income are assigned to the taxpayer's domicile.

Subd. 1a. [Repealed, 1987 c 268 art 1 s 127]

Subd. 2. Income not derived from conduct of a trade or business. The income of a taxpayer subject to the allocation rules that is not derived from the conduct of a trade or business must be assigned in accordance with paragraphs (a) to (f):

(a)(1) Subject to paragraphs (a)(2) and (a)(3), income from labor or personal or professional services is assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources is treated as income from sources without this state.

(2) 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; and

(ii) The amount of income to be assigned to Minnesota for an individual who is a nonresident, and who is an athlete or entertainer not listed in clause (i), 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.

(3) 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 firefighters' relief association, by way of payment as a pension, public employee retirement benefit, or any combination of these, or as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 408, or 409, or as defined in section 403(b) or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1987, 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.

(b) Income or gains from tangible property located in this state that is not employed in the business of the recipient of the income or gains must be assigned to this state.

(c) Except upon the sale of a partnership interest or the sale of stock of an S corporation, income or gains from intangible personal property not employed in the business of the recipient of the income or gains must be assigned to this state if the recipient of the income or gains is a resident of this state or is a resident trust or estate.

Gain on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in this state to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than 50 percent of the value of the partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

Gain on the sale of stock held in an S corporation is allocable to this state in the ratio of the original cost of tangible property of the S corporation within this state to the original cost of tangible property of the S corporation everywhere.

(d) 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.

(e) Income from winnings on Minnesota pari-mutuel betting tickets and lawful gambling as defined in section 349.12, subdivision 2, conducted within the boundaries of the state of Minnesota shall be assigned to this state.

(f) All items of gross income not covered in paragraphs (a) to (e) and not part of the taxpayer's income from a trade or business shall be assigned to the taxpayer's domicile.

Subd. 3. Trade or business income; general rule. Income derived from carrying on a trade or business must be assigned to this state if the trade or business is conducted wholly within this state, assigned outside this state if conducted wholly without this state and apportioned between this state and other states and countries under this subdivision if conducted partly within and partly without this state. For purposes of

determining whether a trade or business is carried on exclusively within or without this state:

(a) A trade or business physically located exclusively within this state is nevertheless carried on partly within and partly without this state if any of the principles set forth in section 290.191 for the allocation of sales or receipts within or without this state when applied to the taxpayer's situation result in the allocation of any sales or receipts without this state.

(b) A trade or business physically located exclusively without this state is nevertheless carried on partly within and partly without this state if any of the principles set forth in section 290.191 for the allocation of sales or receipts within or without this state when applied to the taxpayer's situation result in the allocation of any sales or receipts without this state. The jurisdiction to tax such a business under this chapter must be determined in accordance with sections 290.014 and 290.015.

Subd. 4. Unitary business principle. (a) If a trade or business conducted wholly within this state or partly within and partly without this state is part of a unitary business, the entire income of the unitary business is subject to apportionment pursuant to section 290.191. Notwithstanding subdivision 2, paragraph (c), none of the income of a unitary business is considered to be derived from any particular source and none may be allocated to a particular place except as provided by the applicable apportionment formula. The provisions of this subdivision do not apply to farm income subject to subdivision 5, paragraph (a), business income subject to subdivision 5, paragraph (b) or (c), income of an insurance company determined under section 290.35, or income of an investment company determined under section 290.36.

(b) The term "unitary business" means business activities or operations which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership or a trust.

(c) Unity is 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.

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

(e) Unity of ownership is not deemed to exist when a corporation is involved unless that corporation is a member of a group of two or more business entities and 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.

(f) The net income and apportionment factors under section 290.191 or 290.20 of foreign corporations and other foreign entities which are part of a unitary business shall not be included in the net income or the apportionment factors of the unitary business. A foreign corporation or other foreign entity which is required to file a return under this chapter shall file on a separate return basis. The net income and apportionment factors under section 290.191 or 290.20 of foreign operating corporations shall not be included in the net income or the apportionment factors of the unitary business except as provided in paragraph (g).

(g) The adjusted net income of a foreign operating corporation shall be deemed to be paid as a dividend on the last day of its taxable year to each shareholder thereof, in proportion to each shareholder's ownership, with which such corporation is engaged in a unitary business. Such deemed dividend shall be treated as a dividend under section 290.21, subdivision 4.

Dividends actually paid by a foreign operating corporation to a corporate shareholder which is a member of the same unitary business as the foreign operating corporation shall be eliminated from the net income of the unitary business in preparing a combined report for the unitary business. The adjusted net income of a foreign operating corporation shall be its net income adjusted as follows:

(1) any taxes paid or accrued to a foreign country, the commonwealth of Puerto Rico, or a United States possession or political subdivision of any of the foregoing shall be a deduction; and

(2) the subtraction from federal taxable income for payments received from foreign corporations or foreign operating corporations under section 290.01, subdivision 19d, clause (11), shall not be allowed.

If a foreign operating corporation incurs a net loss, neither income nor deduction from that corporation shall be included in determining the net income of the unitary business.

(h) For purposes of determining the net income of a unitary business and the factors to be used in the apportionment of net income pursuant to section 290.191 or 290.20, there must be included only the income and apportionment factors of domestic corporations or other domestic entities other than foreign operating corporations that are determined to be part of the unitary business pursuant to this subdivision, notwithstanding that foreign corporations or other foreign entities might be included in the unitary business.

(i) Deductions for expenses, interest, or taxes otherwise allowable under this chapter that are connected with or allocable against dividends, deemed dividends described in paragraph (g), or royalties, fees, or other like income described in section 290.01, subdivision 19d, clause (11), shall not be disallowed.

(j) Each corporation or other entity that is part of a unitary business must file combined reports as the commissioner determines. On the reports, all intercompany transactions between entities included pursuant to paragraph (h) must be eliminated and the entire net income of the unitary business determined in accordance with this subdivision is apportioned among the entities by using each entity's Minnesota factors for apportionment purposes in the numerators of the apportionment formula and the total factors for apportionment purposes of all entities included pursuant to paragraph (h) in the denominators of the apportionment formula.

(k) If a corporation has been divested from a unitary business and is included in a combined report for a fractional part of the common accounting period of the combined report:

(1) its income includable in the combined report is its income incurred for that part of the year determined by proration or separate accounting; and

(2) its sales, property, and payroll included in the apportionment formula must be prorated or accounted for separately.

Subd. 5. Special rules. Notwithstanding subdivisions 3 and 4, all income from the operation of the following types of businesses must be allocated as follows:

(a) All income from the operation of a farm is assigned to this state if the farm is located within this state and no such income is assigned to this state if the farm is located without this state.

(b) Income from a trade or business consisting principally of the performance of personal or professional services is assigned to this state if, and to the extent that, the services are performed within this state.

(c) For athletic teams when the visiting team does not share in the gate receipts, all of the team's income is assigned to the state in which the team's operation is based.

Subd. 6. Nonbusiness income. For a trade or business for which allocation of income within and without this state is required, if the taxpayer has any income not connected with the trade or business carried on partly within and partly without this state that income must be allocated under subdivision 2. Intangible property is employed

in a trade or business if the owner of the property holds it as a means of furthering the trade or business.

History: (2394-23) 1933 c 405 s 23; Ex1937 c 49 s 17; 1949 c 734 s 8; 1971 c 152 s 1; 1971 c 730 s 1; 1973 c 650 art 7 s 1; 1977 c 423 art 1 s 11; 1977 c 429 s 63; 1978 c 767 s 18; 1979 c 303 art 1 s 18,19; 1980 c 512 s 6; 1980 c 607 art 1 s 20,21,32; 1981 c 60 s 27; 1981 c 178 s 59; 1Sp1981 c 1 art 9 s 7; 1982 c 523 art 28 s 2; art 40 s 14; 3Sp1981 c 2 art 3 s 13; 1983 c 15 s 17; 1983 c 207 s 18,43; 1983 c 342 art 1 s 24,43; 1984 c 514 art 1 s 8; art 2 s 22-24; 1984 c 655 art 1 s 50; 1Sp1985 c 14 art 21 s 31; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 2 s 2; 1987 c 268 art 1 s 73; 1988 c 719 art 1 s 12; art 2 s 30; art 3 s 12

NOTE: Subdivision 4, paragraphs (f), (g), (h), and (i), as amended by Laws 1988, chapter 719, article 2, section 30, are effective for taxable years beginning after December 31, 1990, except that insofar as they apply to 936 corporations, they are effective for taxable years beginning after December 31, 1989. See Laws 1988, chapter 719, article 2, section 57.

NOTE: Subdivision 4, paragraph (i), as added by Laws 1988, chapter 719, article 2, section 30, is effective for taxable years beginning after December 31, 1988, in its application to income described in section 290.01, subdivision 19d, clause (11), for taxable years beginning after December 31, 1989, in its application to other income of 936 corporations, and for taxable years beginning after December 31, 1990, in its application to other income of foreign operating corporations. See Laws 1988, chapter 719, article 2, section 57.

290.171 ENACTMENT OF MULTISTATE TAX COMPACT.

The "multistate tax compact" is hereby enacted into law to the extent provided in this section and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the

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sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of article V of this compact shall apply only to the taxes specifically designated therein.

Article III. Elements of Income Tax Laws.

NOTE: Article III was repealed by amendment, 1987 c 268 art 1 s 74.

Article IV. Division of Income.

NOTE: Article IV was repealed by amendment, 1987 c 268 art 1 s 74.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

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(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

- (a) Study state and local tax systems and particular types of state and local taxes.
- (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.
- (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
- (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms.

2. Prior to the adoption of any regulation, the commission shall:

- (a) As provided in its bylaws, hold at least one public hearing on due notice to all

affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits.

1. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

2. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

3. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

4. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

5. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

6. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

7. In no event shall the commission make any charge against a taxpayer for an audit.

8. As used in this article, "tax," in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever the laws of the party states or subdivisions thereof are substantially identical with the relevant provisions of this chapter, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to

compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force and Withdrawal.

1. This compact shall become effective as to any other state upon its enactment. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdictions.

Nothing in this compact shall be construed to:

- (a) Affect the power of any state or subdivision thereof to fix rates of taxation.
- (b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax, provided that the definition of "tax" in article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to article VI 3 may apply.
- (c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
- (d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be

affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: 1983 c 342 art 16 s 1; 1987 c 268 art 1 s 74

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 the commissioner. The alternate shall be an employee of the department of revenue.

History: 1983 c 342 art 16 s 2; 1985 c 210 art 2 s 5; 1986 c 444

290.173 MULTISTATE COMPACT ADVISORY COMMITTEE.

There is hereby established the multistate tax compact advisory committee composed of the commissioner of revenue or the alternate member of the commission designated by the commissioner, the attorney general or a designee, and two members of the senate, appointed by the committee on committees, and two members of the house of representatives appointed by the speaker of the house. The chair shall be the member of the multistate tax commission, representing the state of Minnesota. The committee shall meet at the call of its chair or at the request of a majority of its members, but in any event not less than three times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing the state of Minnesota on the commission.

History: 1983 c 342 art 16 s 3; 1986 c 444

290.174 INTERSTATE AUDITS.

Article VIII of the multistate tax compact relating to interstate audits shall be in force in and with respect to the state of Minnesota. For purposes of sections 290.61 and 297A.43, the Multistate Tax Commission will be considered to be a state for purposes of auditing corporate sales, excise, and income tax returns.

History: 1983 c 342 art 16 s 4; 1984 c 514 art 3 s 4

290.175 [Repealed, 1987 c 268 art 1 s 127]

290.18 [Repealed, 1987 c 268 art 1 s 127]

290.19 [Repealed, 1987 c 268 art 1 s 127]

290.191 APPORTIONMENT OF NET INCOME.

Subdivision 1. General rule. Except as otherwise provided in section 290.17, subdivision 5, the net income from a trade or business carried on partly within and partly without this state must be apportioned to this state as provided in this section. For purposes of this section, state means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States or any foreign country.

Subd. 2. Apportionment formula of general application. Except for those trades or businesses required to use a different formula under subdivision 3 or section 290.35 or 290.36, and for those trades or businesses that receive permission to use some other method under section 290.20 or under subdivision 4, a trade or business required to apportion its net income must apportion its income to this state on the basis of the percentage obtained by taking the sum of:

(1) 70 percent of the percentage which the sales made within this state in connection with the trade or business during the tax period are of the total sales wherever made in connection with the trade or business during the tax period;

(2) 15 percent of the percentage which the total tangible property used by the taxpayer in this state in connection with the trade or business during the tax period is of the total tangible property, wherever located, used by the taxpayer in connection with the trade or business during the tax period; and

(3) 15 percent of 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 the trade or business during the tax period are of the taxpayer's total payrolls paid or incurred in connection with the trade or business during the tax period.

Subd. 3. Apportionment formula for financial institutions. Except for an investment company required to apportion its income under section 290.36, a financial institution that is required to apportion its net income must apportion its net income to this state on the basis of the percentage obtained by taking the sum of:

(1) 70 percent of the percentage which the receipts from within this state in connection with the trade or business during the tax period are of the total receipts in connection with the trade or business during the tax period, from wherever derived;

(2) 15 percent of the percentage which the sum of the total tangible property used by the taxpayer in this state and the intangible property owned by the taxpayer and attributed to this state in connection with the trade or business during the tax period is of the sum of the total tangible property, wherever located, used by the taxpayer and the intangible property owned by the taxpayer and attributed to all states in connection with the trade or business during the tax period; and

(3) 15 percent of 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 the trade or business during the tax period are of the taxpayer's total payrolls paid or incurred in connection with the trade or business during the tax period.

Subd. 4. Apportionment formula for certain mail order businesses. 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 99 percent of the taxpayer's property and payroll is within Minnesota, then the taxpayer may apportion net income to Minnesota based solely upon the percentage that the sales made within this state in connection with the trade or business during the tax period are of the total sales wherever made in connection with the trade or business during the tax period. Property and payroll factors are disregarded. In determining eligibility for this subdivision, the sale not in the ordinary course of business of tangible or intangible assets used in conducting business activities must be disregarded.

Subd. 5. Determination of sales factor. For purposes of this section, the following rules apply in determining the sales factor.

(a) The sales factor includes all sales, gross earnings, or receipts received in the ordinary course of the business, except that the following types of income are not included in the sales factor:

(1) interest;

(2) dividends;

(3) sales of capital assets as defined in section 1221 of the Internal Revenue Code of 1986, as amended through December 31, 1987;

(4) sales of property used in the trade or business, except sales of leased property of a type which is regularly sold as well as leased;

(5) sales of debt instruments as defined in section 1275(a)(1) of the Internal Revenue Code of 1986, as amended through December 31, 1987, or sales of stock; and

(6) royalties, fees, or other like income of a type which qualify for a subtraction from federal taxable income under section 290.01, subdivision 19(d)(11).

(b) Sales of tangible personal property are made within this state if the property is received by a purchaser at a point within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point, other conditions of the sale, or the ultimate destination of the property.

(c) Tangible personal property delivered to a common or contract carrier or foreign vessel for delivery to a purchaser in another state or nation is a sale in that state or nation, regardless of f.o.b. point or other conditions of the sale.

(d) Notwithstanding paragraphs (b) and (c), when intoxicating liquor, wine, fermented malt beverages, cigarettes, or tobacco products are sold to a purchaser who is licensed by a state or political subdivision to resell this property only within the state of ultimate destination, the sale is made in that state.

(e) Sales made by or through a corporation that is qualified as a domestic international sales corporation under section 992 of the Internal Revenue Code are not considered to have been made within this state.

(f) Sales, rents, royalties, and other income in connection with real property is attributed to the state in which the property is located.

(g) Receipts from the lease or rental of tangible personal property, including finance leases and true leases, must be attributed to this state if the property is located in this state and to other states if the property is not located in this state. Moving property including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment is located in this state if:

(1) the operation of the property is entirely within this state; or

(2) the operation of the property is in two or more states and the principal base of operations from which the property is sent out is in this state.

(h) Royalties and other income not described in paragraph (a), clause (6), received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or similar items, must be attributed to the state in which the property is used by the purchaser. If the property is used in more than one state, the royalties or other income must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income must be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights therein in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.

(i) Sales of intangible property are made within the state in which the property is used by the purchaser. If the property is used in more than one state, the sales must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the sale must be excluded from both the numerator and the denominator of the sales factor. Intangible property is used in this state if the purchaser used the intangible property in the regular course of its business operations in this state.

(j) Receipts from the performance of services must be attributed to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one state, the receipts from those benefits must be apportioned to this state pro rata according to the portion of the benefits consumed in this state. If the extent to which the benefits of services are consumed in this state is not readily determinable, the benefits of the services shall be deemed to be consumed at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the benefits of the services shall be deemed to be consumed at the office of the customer to which the services are billed.

Subd. 6. Determination of receipts factor for financial institutions. (a) For purposes of this section, the rules in this subdivision and subdivisions 7 and 8 apply in determining the receipts factor for financial institutions.

(b) "Receipts" for this purpose means gross income, including net taxable gain on disposition of assets, including securities and money market instruments, when derived from transactions and activities in the regular course of the taxpayer's trade or business.

(c) "Money market instruments" means federal funds sold and securities pur-

chased under agreements to resell, commercial paper, banker's acceptances, and purchased certificates of deposit and similar instruments to the extent that the instruments are reflected as assets under generally accepted accounting principles.

(d) "Securities" means United States Treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate stock and other securities, participations in securities backed by mortgages held by United States or state government agencies, loan-backed securities and similar investments to the extent the investments are reflected as assets under generally accepted accounting principles.

(e) Receipts from the lease or rental of real or tangible personal property, including both finance leases and true leases, must be attributed to this state if the property is located in this state. Tangible personal property that is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, is considered to be located in a state if:

(1) the operation of the property is entirely within the state; or

(2) the operation of the property is in two or more states, but the principal base of operations from which the property is sent out is in the state.

(f) Interest income and other receipts from assets in the nature of loans that are secured primarily by real estate or tangible personal property must be attributed to this state if the security property is located in this state under the principles stated in paragraph (e).

(g) Interest income and other receipts from consumer loans not secured by real or tangible personal property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means, must be attributed to this state.

(h) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property must be attributed to this state if the proceeds of the loan are to be applied in this state. If it cannot be determined where the funds are to be applied, the income and receipts are attributed to the state in which the office of the borrower from which the application would be made in the regular course of business is located. If this cannot be determined, the transaction is disregarded in the apportionment formula.

(i) Interest income and other receipts from a participating financial institution's portion of participation loans must be attributed under paragraphs (e) to (h). A participation loan is a loan in which more than one lender is a creditor to a common borrower.

(j) Interest income and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees must be attributed to the state to which the card charges and fees are regularly billed.

(k) Merchant discount income derived from financial institution credit card holder transactions with a merchant must be attributed to the state in which the merchant is located. In the case of merchants located within and outside the state, only receipts from merchant discounts attributable to sales made from locations within the state are attributed to this state. It is presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer.

(l) Receipts from the performance of fiduciary and other services must be attributed to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one state, the receipts from those benefits must be apportioned to this state pro rata according to the portion of the benefits consumed in this state. If the extent to which the benefits of services are consumed in this state is not readily determinable, the benefits of the services shall be deemed to be consumed at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be

determined, the benefits of the services shall be deemed to be consumed at the office of the customer to which the services are billed.

(m) Receipts from the issuance of travelers checks and money orders must be attributed to the state in which the checks and money orders are purchased.

(n) Receipts from investments of a financial institution in securities of this state, its political subdivisions, agencies, and instrumentalities must be attributed to this state.

(o) Receipts from a financial institution's interest in any property described in section 290.015, subdivision 3, paragraph (b), is not included in the numerator or the denominator of the receipts factor provided the financial institution's activities within this state with respect to any interest in the property are limited in the manner provided in section 290.015, subdivision 3, paragraph (b). If a financial institution is subject to tax under this chapter, its interest in property described in section 290.015, subdivision 3, paragraph (b), is included in the receipts factor in the same manner as assets in the nature of securities or money market instruments are included under paragraph (n) and subdivision 7.

Subd. 7. Receipts from investments in nonstate securities; how apportioned.

Receipts from investments of a financial institution in other securities and from money market instruments must be apportioned to this state based on the ratio that total deposits from this state, its residents, including any business with an office or other place of business in this state, its political subdivisions, agencies, and instrumentalities bear to the total deposits from all states, their residents, their political subdivisions, agencies, and instrumentalities. In the case of an unregulated financial institution subject to this section, these receipts are apportioned to this state based on the ratio that its gross business income earned from sources within this state bears to gross business income earned from sources within all states. For purposes of this subdivision, deposits made by this state, its residents, its political subdivisions, agencies, and instrumentalities must be attributed to this state, whether or not the deposits are accepted or maintained by the taxpayer at locations within this state.

Subd. 8. Deposit; definition. (a) "Deposit," as used in subdivision 7, has the meanings in this subdivision.

(b) "Deposit" means the unpaid balance of money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account whether or not advance notice is required to withdraw the credited funds, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial institution, or a letter of credit or a traveler's check on which the financial institution is primarily liable. However, without limiting the generality of the term "money or its equivalent," any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining the credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to the bank for collection.

(c) "Deposit" means trust funds received or held by the financial institution, whether held in the trust department or held or deposited in any other department of the financial institution.

(d) "Deposit" means money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institution, in the usual course of business for a special or specific purpose, regardless of the legal relationship so established. Under this paragraph, "deposit" includes, but is not limited to, escrow funds, funds held as security for an obligation due to the financial institution or others, including funds held as dealers reserves, or for securities loaned by the bank, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds

held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes. It does not include funds received by the financial institution for immediate application to the reduction of an indebtedness to the receiving financial institution, or under condition that the receipt of the funds immediately reduces or extinguishes the indebtedness.

(e) "Deposit" means outstanding drafts, including advice or authorization to charge a financial institution's balance in another such institution, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the financial institution itself.

(f) "Deposit" means money or its equivalent held as a credit balance by a financial institution on behalf of its customer if the entity is engaged in soliciting and holding such balances in the regular course of its business.

(g) Interinstitution fund transfers are not deposits.

Subd. 9. Determination of property factor; general rules. For all taxpayers, the property factor includes tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in connection with the trade or business, as set forth in subdivision 10. For financial institutions only, the property factor also includes intangible property, as set forth in subdivision 11. For both tangible and intangible property, the property included in the property factor is the average of the total property used by the taxpayer in connection with its business during the tax period. Such averages must be on a commensurate basis for property within and without the state.

Subd. 10. Property factor; tangible property. (a) Tangible property includes land, buildings, machinery and equipment, inventories, and other tangible personal property actually used by the taxpayer during the taxable year in carrying on the business activities of the taxpayer. Tangible property which is separately allocated under section 290.17 is not includable in the property factor.

(b) Cash on hand or in banks, shares of stock, notes, bonds, accounts receivable, or other evidences of indebtedness, special privileges, franchises, and goodwill, are specifically excluded from the property factor, except as otherwise provided for financial institutions in subdivision 11.

(c) The value of tangible property that is owned by the taxpayer and that is to be used in the apportionment fraction is the original cost adjusted for any later capital additions or improvements and partial disposition by reason of sale, exchange, or abandonment.

(d) For purposes of computing the property factor, United States government property that is used by the taxpayer must be considered owned by the taxpayer.

(e) Property that is rented by the taxpayer is valued at eight times the net annual rental. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from subrentals. If the subrents taken into account in determining the net annual rental produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the commissioner or requested by the taxpayer. In no case, however, shall the value be less than an amount which bears the same ratio to the annual rental paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. Rents paid during the year cannot be averaged.

(f) A person filing a combined report shall use this method of calculating the property factor for all members of the group.

Subd. 11. Financial institutions; property factor. (a) For financial institutions, the property factor includes, as well as tangible property, intangible property as set forth in this subdivision.

(b) Intangible personal property must be included at its tax basis for federal income tax purposes.

- (c) Goodwill must not be included in the property factor.
- (d) Coin and currency located in this state must be attributed to this state.
- (e) Lease financing receivables must be attributed to this state if and to the extent that the property is located within this state.
- (f) Assets in the nature of loans that are secured by real or tangible personal property must be attributed to this state if and to the extent that the security property is located within this state.
- (g) Assets in the nature of consumer loans and installment obligations that are unsecured or secured by intangible property must be attributed to this state if the loan was made to a resident of this state.
- (h) Assets in the nature of commercial loan and installment obligations that are unsecured or secured by intangible property must be attributed to this state if the loan proceeds of the loan are to be applied in this state. If it cannot be determined where the funds are to be applied, the assets must be attributed to the state in which there is located the office of the borrower from which the application would be made in the regular course of business. If this cannot be determined, the transaction is disregarded in the apportionment formula.
- (i) A participating financial institution's portion of a participation loan must be attributed under paragraphs (e) to (h).
- (j) Financial institution credit card and travel and entertainment credit card receivables must be attributed to the state to which the credit card charges and fees are regularly billed.
- (k) Receivables arising from merchant discount income derived from financial institution credit card holder transactions with a merchant are attributed to the state in which the merchant is located. In the case of merchants located within and without the state, only receipts from merchant discounts attributable to sales made from locations within the state are attributed to this state. It is presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer.
- (l) Assets in the nature of securities and money market instruments are apportioned to this state based upon the ratio that total deposits from this state, its residents, its political subdivisions, agencies and instrumentalities bear to the total deposits from all states, their residents, their political subdivisions, agencies and instrumentalities. In the case of an unregulated financial institution, the assets are apportioned to this state based upon the ratio that its gross business income earned from sources within this state bears to gross business income earned from sources within all states. For purposes of this subsection, deposits made by this state, its residents, its political subdivisions, agencies, and instrumentalities are attributed to this state, whether or not the deposits are accepted or maintained by the taxpayer at locations within this state.
- (m) A financial institution's interest in any property described in section 290.015, subdivision 3, paragraph (b), is not included in the numerator or the denominator of the property factor provided the financial institution's activities within this state with respect to any interest in such property are limited in the manner provided in section 290.015, subdivision 3, paragraph (b). If a financial institution is subject to tax under this chapter, its interest in property described in section 290.015, subdivision 3, paragraph (b), is included in the property factor in the same manner as assets in the nature of securities or money market instruments are included under paragraph (l).

Subd. 12. Determination of payroll factor. (a) The payroll factor must be determined in the same way for all taxpayers.

(b) Wages or salaries must be determined to be paid or incurred in this state if the individual with respect to whom the wages or salaries are paid is either employed within this state or is actually engaged in work in the territorial confines of this state, or if working without this state, is identified with or accountable to an office within this state.

(c) The wages or salaries paid to officers and employees working from offices

within this state are considered payroll within this state even though the officer's and employee's employment requires them to spend working time without this state. Officers and employees whose employment requires them to work without the state entirely and who are assigned to an office without the state, are not considered employees within the state for the purpose of apportionment even though their salaries are paid from the taxpayer's general offices within the state.

History: 1987 c 268 art 1 s 75; 1988 c 719 art 2 s 31-35

NOTE: Subdivision 1 as amended by Laws 1988, chapter 719, article 2, section 31, is effective for taxable years beginning after December 31, 1990. See Laws 1988, chapter 719, article 2, section 57.

290.20 NET INCOME; ALLOCATION TO STATE, PETITION FOR OTHER METHODS.

Subdivision 1. The methods prescribed by section 290.191 shall be presumed to determine fairly and correctly the taxpayer's taxable net income allocable to this state. If the methods prescribed by section 290.191 do not fairly reflect all or any part of taxable net income allocable to this state, the taxpayer may petition for or the commissioner may require the determination of net income by the use of another method, if that method fairly reflects net income. These other methods may include:

- (1) separate accounting;
- (2) excluding any one or more of the factors;
- (3) including one or more additional factors; or
- (4) some other method.

Subd. 1a. A petition within the meaning of this section must be filed by the taxpayer in the form required by the commissioner.

Subd. 2. The methods prescribed by subdivision 1 shall not be applicable wherever and insofar as the taxpayer's business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores.

History: (2394-26) 1933 c 405 s 26; Ex1937 c 49 s 29; 1939 c 446 s 23; 1947 c 635 s 9; 1967 c 671 s 6; 1986 c 444; 1987 c 268 art 1 s 76,77

290.21 DEDUCTIONS ALLOWED TO CORPORATIONS.

Subdivision 1. The following deductions shall be allowed only to corporations and shall be deductions from a corporation's taxable net income.

Subd. 2. [Repealed, 1980 c 607 art 9 s 2]

Subd. 3. An amount for contribution or gifts made within the taxable year:

(a) to or for the use of the state of Minnesota, or any of its political subdivisions for exclusively public purposes,

(b) to or for the use of any community chest, corporation, organization, trust, fund, association, or foundation located in and carrying on substantially all of its activities within this state, organized and operating exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual,

(c) to a fraternal society, order, or association, operating under the lodge system located in and carrying on substantially all of their activities within this state if such contributions or gifts are to be used exclusively for the purposes specified in clause (b), or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual,

(d) to or for the use of the United States of America for exclusively public purposes if the contribution or gift consists of real property located in Minnesota,

(e) to or for the use of a foundation if the foundation is organized and operated exclusively for a purpose in clause (b), and has no part of its net earnings inuring to the benefit of a private shareholder or individual, but does not carry on substantially all

of its activities within this state. The deduction under this clause equals the amount of the corporation's contributions or gifts to the foundation within the taxable year multiplied by a fraction equal to the ratio of the foundation's total expenditures during the taxable year for the benefit of organizations described in clause (b) to the foundation's total expenditures during the taxable year,

(f) the total deduction hereunder shall not exceed 15 percent of the taxpayer's taxable net income less the deductions allowable under this section other than those for contributions or gifts,

(g) in the case of a corporation reporting its taxable income on the accrual basis, if: (A) the board of directors authorizes a charitable contribution during any taxable year, and (B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year; then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the commissioner shall by rules prescribe.

Subd. 3a. [Repealed, 1983 c 342 art 1 s 44]

Subd. 4. (a) Eighty percent of dividends received by a corporation during the taxable year from another corporation, in which the recipient owns 20 percent or more of the stock, by vote and value, not including stock described in section 1504(a)(4) of the Internal Revenue Code of 1986, as amended through December 31, 1987, 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 the taxpayer's 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.

(b) Seventy percent of dividends received by a corporation during the taxable year from another corporation in which the recipient owns less than 20 percent of the stock, by vote or value, not including stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 as amended through December 31, 1987, when the corporate stock with respect to which dividends are paid does not constitute the stock in trade of the taxpayer, or does not constitute property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's 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 income and gain therefrom.

(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 1986, as amended through December 31, 1987.

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 1986, as amended through December 31, 1987.

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 1986, as amended through December 31, 1987.

(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) The deduction provided by this subdivision does not apply if the dividends are paid by a FSC as defined in section 922 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

(f) If one or more of the members of the unitary group whose income is included on the combined report received a dividend, the deduction under this subdivision for each member of the unitary business required to file a return under this chapter is the product of: (1) 100 percent of the dividends received by members of the group; (2) 80 percent or 70 percent, pursuant to paragraph (a) or (b); and (3) the percentage of the taxpayer's business income apportionable to this state for the taxable year under section 290.191 or 290.20.

Subd. 5. [Repealed, 1987 c 268 art 1 s 127]

Subd. 6. [Repealed, 1987 c 268 art 1 s 127]

Subd. 7. [Repealed, 1982 c 523 art 1 s 72]

Subd. 8. [Repealed, 1988 c 719 art 2 s 56]

History: (2394-27) 1933 c 405 s 27; Ex1937 c 49 s 18; 1939 c 446 s 8; 1941 c 550 s 21; 1943 c 656 s 28; 1947 c 635 s 10; 1949 c 734 s 10; 1951 c 679 s 3; 1953 c 321 s 1; 1955 c 385 s 2; 1955 c 742 s 1; 1955 c 775 s 1; 1961 c 508 s 1; 1963 c 331 s 1; 1965 c 367 s 1; 1971 c 769 s 2; 1973 c 711 s 3; 1974 c 157 s 3; 1975 c 284 s 48; 1975 c 349 s 17,29; 1976 c 2 s 106; 1976 c 334 s 14; 1977 c 376 s 13; 1977 c 386 s 5; 1978 c 463 s 107; 1978 c 766 s 5; 1979 c 303 art 1 s 20; 1980 c 607 art 1 s 32; 1981 c 29 art 7 s 31; 1981 c 60 s 27; 1981 c 178 s 62-66; 3Sp1981 c 2 art 3 s 14; 1982 c 523 art 1 s 30; art 29 s 3; art 40 s 14; 1983 c 15 s 18; 1983 c 207 s 43; 1983 c 342 art 1 s 27,28,43; 1984 c 502 art 5 s 14,15; 1984 c 514 art 1 s 8; art 4 s 4; 1985 c 248 s 70; 1Sp1985 c 14 art 1 s 46; art 21 s 32,49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 2 s 3; art 3 s 12,13; 1987 c 268 art 1 s 78-80; 1988 c 719 art 2 s 36,37; art 3 s 12

290.22 ESTATES AND TRUSTS, IMPOSITION OF TAX.

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

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

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

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

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

History: (2394-28) 1933 c 405 s 28; 1939 c 446 s 9; 1981 c 178 s 67

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

Subdivision 1. [Repealed, 1981 c 178 s 119]

Subd. 2. [Repealed, 1981 c 178 s 119]

Subd. 3. **Unused loss carryovers and excess deductions on termination available to beneficiaries.** If on the termination of an estate or trust, the estate or trust has

(1) a net operating loss carryover under section 290.095, or any other loss or credit carryover allowed under this chapter; or

(2) for the last taxable year of the estate or trust deductions (other than the charitable deduction) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with rules prescribed by the commissioner, to the beneficiaries succeeding to the property of the estate or trust. This provision does not apply to individuals, and carryovers and deductions must be reported as provided in section 290.01, subdivisions 19 to 19b.

Subd. 4. Net operating loss deduction. The benefit of the deduction for net operating loss allowed by section 290.095 shall be allowed to estates and trusts under rules prescribed by the commissioner. The benefit of such deduction shall not be allowed to a common trust fund but shall be allowed to the participants in the common trust fund under rule prescribed by the commissioner.

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 1986, as amended through December 31, 1987 with the following modification:

There shall be included any tax-exempt interest to which section 290.01, subdivision 19b, clause (1) applies.

If the estate or trust is allowed a deduction under section 642(c) of the Internal Revenue Code of 1986, as amended through December 31, 1987, 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 1986, as amended through December 31, 1987. 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 1986, as amended through December 31, 1987.

Subd. 6. [Repealed, 1981 c 178 s 119]

Subd. 7. [Repealed, 1981 c 178 s 119]

Subd. 8. [Repealed, 1981 c 178 s 119]

Subd. 9. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus. The provisions of sections 652, 662, 663 and 664(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall apply to inclusion of amounts in gross income of beneficiaries.

Subd. 10. [Repealed, 1981 c 178 s 119]

Subd. 11. [Repealed, 1981 c 178 s 119]

Subd. 12. [Repealed, 1981 c 178 s 119]

Subd. 13. [Repealed, 1981 c 178 s 119]

Subd. 14. [Repealed, 1981 c 178 s 119]

Subd. 15. Accumulations after December 31, 1976. The provisions of sections 665 to 668 of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall be applicable to all accumulation distributions made by a trust after December 31, 1976.

Subd. 16. [Repealed, 1980 c 607 art 1 s 33]

History: (2394-28a) 1939 c 446 s 10; 1941 c 500 s 12; 1943 c 656 s 12; 1945 c 604 s 29; 1957 c 932 s 1; 1973 c 725 s 52; 1977 c 376 s 6; 1979 c 303 art 1 s 21; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 68-71; 1982 c 523 art 1 s 31; art 40 s 14; 1983 c 207 s 43; 1983 c 342 art 1 s 29, 43; 1984 c 514 art 1 s 8; art 4 s 5; 1985 c 248 s 70; 1Sp1985 c 14 art 21 s 33, 49; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 81, 82, 126; 1988 c 719 art 3 s 12

290.24 [Repealed, 1981 c 178 s 119]

290.25 TRUSTS; GRANTOR TREATED AS SUBSTANTIAL OWNER.

Subdivision 1. The provisions of sections 671 to 679, 681 and 682 of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall apply to grantors and others treated as substantial owners and other provisions concerning estates and trusts.

Subd. 2. [Repealed, 1981 c 178 s 119]

Subd. 3. [Repealed, 1981 c 178 s 119]

Subd. 4. [Repealed, 1981 c 178 s 119]

Subd. 5. [Repealed, 1981 c 178 s 119]

History: (2394-28c) 1939 c 446 s 10; 1957 c 846 s 1; 1965 c 51 s 60; 1973 c 725 s 53; 1981 c 178 s 72; 1982 c 523 art 40 s 14; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1986 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 126; 1988 c 719 art 3 s 12

290.26 EXEMPTION FOR INDIVIDUAL RETIREMENT ACCOUNT.

Subdivision 1. [Repealed, 1982 c 523 art 1 s 72]

Subd. 2. [Repealed, 1987 c 268 art 1 s 127]

Subd. 2a. [Repealed, 1983 c 15 s 33]

Subd. 3. [Repealed, 1982 c 523 art 1 s 72]

Subd. 4. [Repealed, 1981 c 178 s 119]

Subd. 5. [Repealed, 1982 c 523 art 1 s 72]

Subd. 6. **Individual retirement account; exemption.** Any individual retirement account that is exempt from taxation under the provisions of section 408 of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall also be exempt from taxation under the provisions of this chapter.

Subd. 7. [Repealed, 1981 c 178 s 119]

History: (2394-28d) 1939 c 446 s 10; 1945 c 604 s 18; 1957 c 766 s 1; 1971 c 769 s 2; 1973 c 582 s 3; 1973 c 711 s 3; 1974 c 157 s 4; 1975 c 349 s 27; 1976 c 2 s 108; 1977 c 376 s 7,13; 1980 c 607 art 1 s 22,32; 1981 c 60 s 17,27; 1981 c 178 s 73-75; 1982 c 523 art 40 s 14; 1983 c 15 s 19; 1983 c 207 s 19,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 34,49; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 126; 1988 c 719 art 3 s 12

290.27 [Repealed, 1981 c 178 s 119]

290.28 [Repealed, 1981 c 178 s 119]

290.281 COMMON TRUST FUND.

Subdivision 1. **Not taxed; defined.** A common trust fund shall not be subject to taxation under this chapter and the definitions provided in and the provisions of section 584 of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall apply.

Subd. 2. [Repealed, 1982 c 523 art 1 s 72]

Subd. 3. [Repealed, 1982 c 523 art 1 s 72]

Subd. 4. [Repealed, 1982 c 523 art 1 s 72]

Subd. 5. **Return required of bank.** Every bank maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and deductions allowed by this section, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant.

Subd. 6. [Repealed, 1982 c 523 art 1 s 72]

History: 1945 c 604 s 14; 1974 c 6 s 2; 1975 c 349 s 30; 1981 c 178 s 76; 1982 c 523

art 1 s 32; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9; art 3 s 14; 1987 c 268 art 126; 1988 c 719 art 3 s 12

290.29 TRANSFEREES, FIDUCIARIES; LIABILITY, TIME LIMIT, NOTICE.

Subdivision 1. Liability, amounts. The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter, including all provisions of the chapter for the collection of taxes:

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

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

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

Subd. 2. Time limit for assessment, collection; generally. The period of limitation for assessment and collection of any such liability of the transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the taxpayer, and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the taxpayer.

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within 3-1/2 years after the expiration of the period of limitation for assessment against the taxpayers and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the preceding transferee, but only if within four years after the expiration of the period of limitation for bringing an action against the taxpayer; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding, and the period of limitation for collection by action shall expire one year after the said liability is assessed.

(3) In the case of the liability of a fiduciary, the tax may be assessed not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later, and may be collected by action brought within one year after assessment.

Subd. 3. Time limit for assessment where taxpayer deceased, corporate existence terminated; notice of liability. For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

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

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

History: (2394-29) 1933 c 405 s 29; 1939 c 446 s 11; 1943 c 656 s 13; 1986 c 444

290.30 FIDUCIARIES, DUTY TO PAY TAX.

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

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

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

History: (2394-29a) 1939 c 446 s 12; 1985 c 248 s 70

290.31 PARTNERSHIPS; INDIVIDUAL LIABILITY OF PARTNERS.

Subdivision 1. Partners, not partnership, subject to tax. A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

Subd. 2. Income and credits of partner. (1) In determining income tax, each partner shall take into account separately the partner's 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 1986, as amended through December 31, 1987 (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 1986, as amended through December 31, 1987,

(e) dividends with respect to which there is provided a deduction under sections 241 to 247 of the Internal Revenue Code of 1986, as amended through December 31, 1987,

(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 the partner's distributive share of the gross income of the partnership.

Subd. 2a. The provisions of subdivisions 2 and 5 do not apply to individuals, and items of income, gain, loss, or deduction must be reported as provided in section 290.01, subdivisions 19 to 19b.

Subd. 3. Partnership computations. The taxable net income of a partnership shall be computed as provided in section 703(a) of the Internal Revenue Code of 1986, as amended through December 31, 1987, except that, in the case of a corporate partner, the deduction for depletion shall be computed under section 290.01, subdivisions 19c and 19d.

Any election affecting the computation of taxable net income derived from a partnership shall be made by the partnership except as provided in section 703(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 4. Partner's distributive share. The provisions of sections 704, 706 to 741, and 743 to 761 of the Internal Revenue Code of 1986, as amended through December 31, 1987, 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 1986, as amended through December 31, 1987, relating to contributions to a partnership or transfers of partnership interests

(1) increased by the sum of the partner's 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 1986, as amended through December 31, 1987, and by the sum of the partner's 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 1986, as amended through December 31, 1987. For corporate partners, the deduction for depletion with respect to oil and gas wells shall be computed as provided in section 290.01, subdivisions 19c and 19d.

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 the partner's proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

Subd. 6. [Repealed, 1982 c 523 art 1 s 72]

Subd. 7. [Repealed, 1982 c 523 art 1 s 72]

Subd. 8. [Repealed, 1982 c 523 art 1 s 72]

Subd. 8a. [Repealed, 1982 c 523 art 1 s 72]

Subd. 9. [Repealed, 1982 c 523 art 1 s 72]

Subd. 10. [Repealed, 1982 c 523 art 1 s 72]

Subd. 11. [Repealed, 1982 c 523 art 1 s 72]

Subd. 12. [Repealed, 1982 c 523 art 1 s 72]

Subd. 13. [Repealed, 1982 c 523 art 1 s 72]

Subd. 14. [Repealed, 1982 c 523 art 1 s 72]

Subd. 15. [Repealed, 1982 c 523 art 1 s 72]

Subd. 16. [Repealed, 1982 c 523 art 1 s 72]

Subd. 17. [Repealed, 1982 c 523 art 1 s 72]

Subd. 18. [Repealed, 1982 c 523 art 1 s 72]

Subd. 19. Basis of transferee partner's interest. The basis of an interest in a partnership acquired other than by contribution shall be determined under this chapter.

Subd. 20. [Repealed, 1982 c 523 art 1 s 72]

Subd. 21. [Repealed, 1982 c 523 art 1 s 72]

Subd. 22. [Repealed, 1982 c 523 art 1 s 72]

Subd. 23. [Repealed, 1982 c 523 art 1 s 72]

Subd. 24. [Repealed, 1982 c 523 art 1 s 72]

Subd. 25. [Repealed, 1982 c 523 art 1 s 72]

Subd. 26. [Repealed, 1982 c 523 art 1 s 72]

Subd. 27. **Allocation of partnership income to state.** The taxable net income of the partnership shall be assigned to this state under sections 290.17 to 290.20.

Subd. 28. [Repealed, 1980 c 419 s 46]

History: (2394-30) 1933 c 405 s 30; Ex1937 c 49 s 20; 1939 c 446 s 13; 1945 c 596 s 2; 1945 c 604 s 30; 1947 c 635 s 11; 1955 c 406 s 1; 1981 c 60 s 18; 1981 c 178 s 77-85; 1982 c 523 art 1 s 33-36; art 40 s 14; 1983 c 207 s 43; 1983 c 342 art 1 s 30,31,43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 35-37,49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 83-86,126; 1988 c 719 art 3 s 12

290.311 PARTNERSHIP GROSS INCOME.

Subdivision 1. **Partners.** (a) Partner's modifications. In determining gross income and Minnesota taxable income of a partner, any modification described in section 290.01, subdivisions 20 to 20f, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates.

(b) Character of items. Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this section which it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Minnesota tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the effect of such provision is the avoidance or evasion of tax under this section, the partner's distributive share of such item, and any modifications required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Subd. 2. [Repealed, 1984 c 514 art 2 s 36]

History: Ex1961 c 51 s 2; 1965 c 51 s 61; 1980 c 419 s 18,19; 1984 c 514 art 2 s 26

290.32 TAXES FOR PART OF YEAR, COMPUTATION.

When under this chapter a taxpayer is permitted or required to make a return for a fractional part of a year, the tax shall be computed in the same manner as if such fractional part of a year were an entire year, except:

(1) A taxpayer who is permitted to change the basis for reporting income from a fiscal to a calendar year shall make a separate return for the period between the close of the taxpayer's last fiscal year and the following December 31st; if the change is from a calendar to a fiscal year, a separate return shall be made for the period between the close of the taxpayer's last calendar year and the date designated as the close of the fiscal year; and if the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. The taxable net income, or for corporations the taxable net income as reduced by the deductions contained in section 290.21, for any such period shall be put on an annual basis by multiplying the amount thereof by 12 and dividing by the number of months included in the period for which such separate return is made; and the tax shall be that part of a tax, computed on the taxable

net income put on such annual basis which the number of months in such period bears to 12 months.

(2) Where any of the enumerated changes in accounting period referred to in clause (1) involve a 52-53 week fiscal year and any such change results in a short period of less than seven days, such short period shall be added to and deemed a part of the following taxable year. If the change results in a short period of seven or more days, but less than 359 days, the taxable net income, or for corporations the taxable net income as reduced by the deductions contained in section 290.21, for any such period shall be placed on an annual basis by multiplying such income by 365 and dividing the result by the same number of days in the short period; and the tax shall be that part of a tax, computed on the taxable net income placed on such annual basis which the number of days in such short period bears to 365 days. Where the short period is 359 days or more, the tax shall be computed in the same manner as if such short period were an entire year.

History: (2394-31) 1933 c 405 s 31; 1955 c 124 s 1; 1980 c 419 s 20; 1981 c 178 s 86; 1982 c 523 art 1 s 37; 1986 c 444

290.33 TAXABLE YEAR EXTENDING INTO CALENDAR YEARS AFFECTED BY DIFFERENT LAWS.

The tax imposed on a taxpayer for a period beginning in one calendar year, hereinafter called "first calendar year," and ending in the following calendar year, hereinafter called "second calendar year," when the law applicable to the first calendar year is different from the law applicable to the second calendar year, shall be the sum of (1) that proportion of a tax for the entire period, computed under the law applicable to the first calendar year, which the portion of such period falling within the first calendar year is of the entire period, and (2) that proportion of a tax for the entire period, computed under the law applicable to the second calendar year, which the portion of such period falling within the second calendar year is of the entire period.

History: (2394-32a) 1933 c 405 s 32-1; Ex1937 c 49 s 21

290.34 CORPORATIONS, SPECIAL PROVISIONS.

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

Subd. 2. Affiliated or related corporations, combined report. When a corporation which is required to file an income tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or has its income regulated through contract or other arrangement, the commissioner of revenue may permit or require such combined report as, in the commissioner's opinion, is necessary in order to determine the taxable net income of any one of the affiliated or related corporations.

Subd. 3. [Repealed, 1983 c 15 s 33]

Subd. 4. [Repealed, 1980 c 419 s 46]

History: (2394-32) 1933 c 405 s 32; 1941 c 458; 1941 c 550 s 13; 1973 c 582 s 3; 1981 c 178 s 87; 3Sp1981 c 2 art 3 s 15; 1982 c 523 art 29 s 4; 1983 c 342 art 1 s 32; 1986 c 444; 1Sp1986 c 1 art 3 s 15; 1987 c 268 art 1 s 87; 1988 c 719 art 2 s 38

290.35 INSURANCE COMPANIES; REPORT OF NET INCOME; COMPUTATION OF AMOUNT OF INCOME ALLOCABLE TO STATE.

Subdivision 1. Computation of taxable net income. The taxable net income of insurance companies taxable under this chapter shall be computed as follows:

Each such company shall report to the commissioner the net income returned by it for the taxable year to the United States under the provisions of the act of congress, known as the revenue act of 1936, or that it would be required to return as net income thereunder if it were in effect. Notwithstanding the provisions of the Revenue Act of 1936, whether or not an insurance company is exempt from taxation must be determined under section 290.05.

Subd. 2. Apportionment of taxable net income. The commissioner shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business, including reinsurance premiums; provided, the commissioner shall add to the taxable net income so apportioned to this state the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge on premiums imposed by sections 69.54 to 69.56) which shall have been deducted from gross income by the company in arriving at its total net income under the provisions of such act of congress.

(a) For purposes of determining the Minnesota apportionment percentage, premiums from reinsurance contracts in connection with property in or liability arising out of activity in, or in connection with the lives or health of Minnesota residents shall be assigned to Minnesota and premiums from reinsurance contracts in connection with property in or liability arising out of activity in, or in connection with the lives or health of non-Minnesota residents shall be assigned outside of Minnesota. Reinsurance premiums are presumed to be received for a Minnesota risk and are assigned to Minnesota, if:

(1) the reinsurance contract is assumed for a company domiciled in Minnesota; and

(2) the taxpayer, upon request of the commissioner, fails to provide reliable records indicating the reinsured contract covered non-Minnesota risks.

For purposes of this paragraph, "Minnesota risk" means coverage in connection with property in or liability arising out of activity in Minnesota, or in connection with the lives or health of Minnesota residents.

(b) The apportionment method prescribed by paragraph (a) shall be presumed to fairly and correctly determine the taxpayer's taxable net income. If the method prescribed in paragraph (a) does not fairly reflect all or any part of taxable net income, the taxpayer may petition for or the commissioner may require the determination of taxable net income by use of another method if that method fairly reflects taxable net income. A petition within the meaning of this section must be filed by the taxpayer on such form as the commissioner shall require.

Subd. 3. Credit. An insurance company shall receive a credit against the tax equal to any taxes based on premiums paid by it that are attributable to 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. 4. Nonprofit health service corporation. For purposes of this section, a nonprofit health service corporation is not an insurance company and the taxable income of a nonprofit health service corporation must be determined as provided under the Internal Revenue Code of 1986 and section 290.01, subdivisions 19c and 19d.

History: (2394-32b) 1933 c 405 s 32-2; Ex1937 c 49 s 21; 1981 c 178 s 88; 1Sp1981 c 4 art 1 s 135; 1987 c 268 art 1 s 88; 1988 c 719 art 2 s 39

290.36 INVESTMENT COMPANIES; REPORT OF NET INCOME; COMPUTATION OF AMOUNT OF INCOME ALLOCABLE TO STATE.

The taxable net income of investment companies shall be computed as follows:

Each investment company transacting business as such in this state shall report to the commissioner the net income returned by the company for the taxable year to the United States under the provisions of the Internal Revenue Code of 1986, as amended through December 31, 1987, less the credits provided therein and subject to the adjustments required by this chapter. The commissioner shall compute therefrom the taxable net income of the investment company by assigning to this state that proportion of such net income, less such credits which the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of this state, bears to the total amount of the gross payments collected during such year by the company from such business upon investment contracts issued by the company and held by persons residing within the state and elsewhere.

As used in this section, the term "investment company" means any person, copartnership, association, or corporation, whether local or foreign, coming within the purview of section 54.26, and who or which is registered under the Investment Company Act of 1940 (United States Code, title 15, section 80a-1 and following), as amended through December 31, 1986, and who or which solicits or receives payments to be made to itself and which issues therefor, or has issued therefor and has or shall have outstanding so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof money or anything of value at some future date; and as to whom the gross payments received during the taxable year in question upon outstanding investment contracts, plus interest and dividends earned on investment contracts determined by prorating the total dividends and interest for the taxable year in question in the same proportion that certificate reserves as defined by the Investment Company Act of 1940, as amended through December 31, 1986, is to total assets, shall be at least 50 percent of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year in question. The term "investment contract" shall mean any such so-called bonds, shares, coupons, certificates of membership, or other evidences of obligation or agreement or pretended agreement issued by an investment company.

History: (2394-32c) 1933 c 405 s 32-3; Ex1937 c 49 s 21; 1947 c 635 s 19; 1977 c 386 s 6; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1982 c 523 art 1 s 38; art 40 s 14; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 2 s 4; 1987 c 268 art 1 s 89; 1988 c 719 art 3 s 12

290.361 [Repealed, 1987 c 268 art 1 s 127]

290.362 [Renumbered 290.085]

290.363 [Repealed, 1980 c 419 s 46]

290.37 FILING REQUIREMENTS.

Subdivision 1. Persons making returns. (a) A taxpayer shall file a return for each taxable year the taxpayer is required to file a return under section 6012 of the Internal Revenue Code of 1986, as amended through December 31, 1987, except that 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 gross income derived from Minnesota sources under sections 290.081, paragraph (a), and 290.17, is less than the filing requirements for a single individual who is a full year resident of Minnesota.

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 the decedent's 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, if the corporation is subject to the state's jurisdiction to tax under section 290.014, subdivision 5, except that a foreign operating corporation as defined in section 290.01, subdivision 6b, is not required to file a return. The return in the case of a corporation must be signed by a person designated by the corporation. 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 bank subject to tax under this chapter. Members of an affiliated group that elect to file one return on behalf of the members of the group under rules adopted by the commissioner may modify or rescind the election by filing the form required by the commissioner.

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.

Subd. 2. Verification. If a return is prepared for a taxpayer by a person (or persons) or a firm (including partnerships, corporations, etc.), the individual or firm responsible for such preparation shall complete the statement of verification provided on the income return forms in the following manner:

(a) If the person (or persons), responsible for the preparation of the return is an individual acting in a personal capacity, the statement of verification shall be signed by such individual;

(b) If a firm is responsible for the preparation of the return, the statement of verification shall be signed with the firm name. However, if the firm name is stamped or typed, it should be followed by the signature of a person authorized to sign the verification on behalf of the firm. The firm may authorize any officer, member, or employee to sign the verification.

Such verification is not required if the actual preparation of the return is a regular and usual incident of the employment of one regularly and continuously employed for full time by the person for whom the return is made (such as a clerk, secretary, bookkeeper, etc.).

Subd. 3. Information included in return. The return shall require a statement of the name of the taxpayer, or taxpayers, if the return is a joint return, and the address of the taxpayer in the same name or names and same address as the taxpayer has used in making the taxpayer's income tax return to the United States, and shall include the social security number of the taxpayer, or taxpayers, if a social security number has been issued by the United States with respect to the taxpayers, and shall include the amount of the taxable income of the taxpayer as it appears on the federal return for the taxable year to which the Minnesota state return is applicable. The taxpayer shall attach to the taxpayer's Minnesota state income tax return a copy of the federal income tax return which the taxpayer has filed or is about to file for the period.

Subd. 4. Furnishing of social security number; penalty. (a) Any individual with respect to whom a return, statement, or other document is required under this chapter to be made by another person shall furnish to that other person the individual's social security account number. Any person required under this chapter to make a return, statement, or other document with respect to another person who is an individual shall request from that individual and shall include in the return, statement, or other document, the individual's social security account number. A return of an estate or

trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each individual beneficiary of the estate or trust, otherwise a return of any individual with respect to the individual's liability for tax, or any statement or other document in support thereof, shall not be considered as a return, statement, or other document with respect to another person.

(b) If any person who is required under clause (a) to (l) furnish the person's social security account number to another person, or (2) include in any return, statement, or other document made with respect to another person who is an individual the social security account number of that individual; fails to comply with the requirement at the time prescribed, that person shall, unless it is shown that the failure is due to reasonable cause and not to willful neglect, pay a penalty of \$50 for each failure except that the total amount imposed on a person for all failures during any calendar year shall not exceed \$25,000.

History: (2394-33) 1933 c 405 s 33; Ex1937 c 49 s 32; 1943 c 656 s 14; 1945 c 604 s 11; 1947 c 635 s 18; 1951 c 609 s 2; 1953 c 664 s 1; 1957 c 934 s 1; 1959 c 367 s 1; Ex1959 c 70 art 3 s 11,12; 1963 c 355 s 11; 1965 c 403 s 1; 1969 c 308 s 1; 1971 c 44 s 1; 1971 c 101 s 1; 1971 c 769 s 2; 1973 c 55 s 1; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1977 c 423 art 1 s 13; 1978 c 721 art 2 s 2; 1978 c 766 s 6; 1979 c 303 art 1 s 22; 1980 c 607 art 1 s 23,32; 1981 c 60 s 27; 1981 c 343 s 10; 1Sp1981 c 3 s 5; 1982 c 523 art 1 s 39; art 40 s 14; 1983 c 207 s 20,43; 1983 c 301 s 179; 1983 c 342 art 1 s 33,43; 1984 c 514 art 1 s 8; art 2 s 27; 1Sp1985 c 14 art 1 s 47; art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 90,91; 1988 c 719 art 2 s 40; art 3 s 12

NOTE: Subdivision 1, as amended by Laws 1988, chapter 719, article 2, section 40, is effective for taxable years beginning after December 31, 1990, except that this subdivision is effective for taxable years beginning after December 31, 1989, insofar as they apply to 936 corporations. See Laws 1988, chapter 719, article 2, section 57.

290.371 NOTICE OF BUSINESS ACTIVITIES REPORT.

Subdivision 1. Report required. Every corporation that, during any calendar year or fiscal accounting year beginning after December 31, 1986, obtained any business from within this state as described in section 290.015, subdivision 1, with the exception of:

- (1) activity levels lower than those set forth in section 290.015, subdivision 2, paragraph (a), if the corporation is a financial institution; or
- (2) activities described in section 290.015, subdivision 3, paragraph (b); or
- (3) corporations specifically exempted under subdivision 3, must file a notice of business activities report, as provided in this section. Filing of the report is not a factor in determining whether a corporation is subject to taxation under this chapter.

Subd. 2. [Repealed, 1988 c 719 art 2 s 56]

Subd. 3. Exemptions. A corporation is not required to file a notice of business activities report if:

- (1) by the end of an accounting period for which it was otherwise required to file a notice of business activities report under this section, it had received a certificate of authority to do business in this state;
- (2) a timely return or report has been filed under section 290.05, subdivision 4; or 290.37;
- (3) the corporation is exempt from taxation under this chapter pursuant to section 290.05, subdivision 1; or
- (4) the corporation's activities in Minnesota, or the interests in property which it owns, consist solely of activities or property exempted from jurisdiction to tax under section 290.015, subdivision 3, paragraph (b).

Subd. 4. Annual filing. Every corporation not exempt under subdivision 3 must file annually a notice of business activities report, including such forms as the commissioner may require, with respect to each of its calendar or fiscal accounting years beginning after December 31, 1986, on or before the 15th day of the fourth month after the close of the calendar or fiscal accounting year.

Subd. 5. Failure to file timely report. (a) Any corporation required to file a notice of business activities report does not have any cause of action upon which it may bring suit under Minnesota law unless the corporation has filed a notice of business activities report.

(b) The failure of a corporation to file a timely report prevents the use of the courts in this state, except regarding activities and property described in section 290.015, subdivision 3, paragraph (b), for all contracts executed and all causes of action that arose at any time before the end of the last accounting period for which the corporation failed to file a required report.

(c) The court in which the issues arise has the power to excuse the corporation for its failure to file a report when due, and restore the corporation's cause of action under the laws of this state, if the corporation has paid all taxes, interest, and civil penalties due the state for all periods, or provided for payment of them by adequate security or bond approved by the commissioner.

(d) Notwithstanding the provisions of section 290.61, the commissioner may acknowledge whether or not a particular corporation has filed with the commissioner reports or returns required by this chapter if the acknowledgment:

- (1) is to a party in a civil action;
- (2) relates to the filing status of another party in the same civil action; and
- (3) is in response to a written request accompanied by a copy of the summons and complaint in the civil action.

History: 1987 c 268 art 1 s 92; 1988 c 719 art 2 s 41-44

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; provided that a spouse who is relieved of a liability attributable to a substantial underpayment under section 6013(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall also be relieved of the state tax liability on the substantial underpayment. 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 shall be made under provisions of section 7703 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

History: (2394-34) 1933 c 405 s 34; 1953 c 664 s 2; Ex1959 c 70 art 3 s 13; 1961 c 213 art 4 s 5; 1971 c 54 s 1; 1971 c 445 s 1; 1975 c 349 s 30; 1980 c 419 s 22; 1Sp1985 c 14 art 1 s 48; 1986 c 444; 1987 c 268 art 1 s 93; 1988 c 719 art 1 s 13; art 3 s 12

290.39 RETURN; FORM AND FILING.

Subdivision 1. In general. Every return shall specifically set forth the items of gross income, deductions, credits against the tax, and any other data necessary for computing the amount of any item required for determining the amount of the net income tax liability. The return shall be in such form as the commissioner of revenue may prescribe. The filing of a return required under this section shall be deemed an assessment subject to revision of the tax shown due on the basis of such return.

In the event a taxpayer files a return which does not contain all the information required by this subdivision, or if the taxpayer fails to file a return or amended return, the commissioner may, in addition to any other remedies which may be available, bring an action in equity by the state against the taxpayer for an injunction ordering the taxpayer to file a complete and proper return in accordance with this subdivision. The Copyright © 1988 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

district courts of this state shall have jurisdiction over the action and disobedience of an injunction issued under this subdivision shall be punished as a contempt of district court.

Subd. 1a. [Repealed, 1Sp1986 c 1 art 3 s 21]

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

Subd. 3. **Forms.** The commissioner shall provide for use a long form individual income tax return and may provide for use a short form individual income tax return. The returns shall be in the form and provide for items as the commissioner may prescribe which are consistent with the provisions of this chapter, notwithstanding any other law to the contrary. The nongame wildlife checkoff provided in section 290.431 and the dependent care credit provided in section 290.067 shall be included on the short form.

Subd. 4. **Voter registration form.** The commissioner shall insert securely in each individual income tax return form or instruction booklet a voter registration form, returnable to the secretary of state, designed according to rules adopted by the secretary of state.

Subd. 5. **Partnerships; nonresident partners.** (a) The commissioner may allow a partnership with five or more nonresident partners to file a composite return on behalf of nonresident partners who have no other Minnesota source income. This composite return must include the names, addresses, social security numbers, income allocation, and tax liability for all nonresident partners electing to be covered by the composite return.

(b) The computation of each partner's tax liability will be determined by multiplying the income allocated to that partner by the highest rate used to determine the tax liability for individuals under section 290.06, subdivision 2c. Nonbusiness deductions, standard deductions, or personal exemptions are not allowed.

(c) The partnership must submit a request to use this composite return filing method for nonresident partners on or before the due date for filing the individual income tax return. The request may be made a part of the return filed.

(d) The electing partner must not have any Minnesota source income other than the income from the partnership and other electing partnerships. If it is determined that the electing partner has other Minnesota source income, the inclusion of the income and tax liability for that partner under this provision will not constitute a return to satisfy the requirements of subdivision 1. The penalty for failure to file a return as provided in section 290.53, subdivision 2, is assessed from the due date for filing a return until a noncomposite return is filed. The tax paid for such an individual as part of the composite return is allowed as a payment of the tax by the individual on the date on which the composite return payment was made. If the electing nonresident partner has no other Minnesota source income, filing of the composite return constitutes a return for purposes of subdivision 1.

(e) This subdivision does not preclude the requirement that an individual pay estimated tax if the individual's liability would exceed the requirements set forth in section 290.93. However, a composite estimate may be filed in a manner similar to and containing the same information required under paragraph (a).

(f) If an electing partner's share of the partnership's gross income from Minnesota sources is less than the filing requirements for a nonresident under section 290.37, subdivision 1, the tax liability is zero. However, a statement showing the partner's share of gross income must be included as part of the composite return.

(g) The election provided in this subdivision is not available to any partner other than a full-year nonresident individual who has no other Minnesota source income.

(h) A corporation defined in section 290.9725 and its nonresident shareholders may make an election under this subdivision. The provisions covering the partnership apply to the corporation and the provisions applying to the partner apply to each shareholder.

(i) Estates and trusts distributing current income only and the nonresident indi-

vidual beneficiaries of such estates or trusts may make an election under this subdivision. The provisions covering the partnership apply to the estate or trust. The provisions applying to the partner apply to each beneficiary.

History: (2394-35, 2394-36) 1933 c 405 s 35,36; 1959 c 367 s 2; 1967 c 582 s 1; 1971 c 445 s 2; 1973 c 582 s 3; 1978 c 766 s 2,7; 1981 c 178 s 89; 1981 c 343 s 11-13; 1982 c 523 art 40 s 14; 1983 c 15 s 20; 1983 c 207 s 43; 1983 c 342 art 1 s 34,43; 1984 c 514 art 1 s 8; 1986 c 444; 1987 c 268 art 1 s 94; 1987 c 361 s 15; 1988 c 719 art 1 s 14

290.391 AMENDED RETURNS.

Any taxpayer whose 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: 1965 c 191 s 1; 1985 c 229 s 2; 1986 c 444

290.40 ANNUAL RETURN, EXCEPTIONS.

The return shall cover a 12-month period, except in the following cases:

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

(2) A taxpayer who, in keeping books, regularly computes income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week, and ends always (a) on whatever date such same day of the week last occurs in a calendar month or (b) on whatever date such same day of the week falls which is nearest to the last day of a calendar month, may, in accordance with rules prescribed by the commissioner, elect to compute the taxpayer's net income and taxable net income on the basis of such annual period. In any case in which the effective date or the applicability of any provision of this chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described herein shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or as ending with the last day of the calendar month ending nearest to the last day such taxable year, as the case may be;

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

History: (2394-37) 1933 c 405 s 37; 1955 c 123 s 1; 1980 c 419 s 23; 1985 c 248 s 70; 1986 c 444

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 a written declaration that it is correct and complete. 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. To the extent required by section 6041 of the Internal Revenue Code of 1986, as amended through December 31, 1987, 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 1986, as amended through December 31, 1987) 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 must file all of these returns on magnetic media if the media were used to satisfy the federal reporting requirement under section 6011(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987, unless the person establishes to the satisfaction of the commissioner that compliance with this requirement would be an undue hardship.

Subd. 3. By brokers. The commissioner of revenue may require every person doing business as a broker to furnish the commissioner with the name and address of each customer for whom they have transacted business, and with such details regarding gross proceeds and other information as to transactions of any customer as will enable the commissioner to determine whether all income tax due on profits or gains of such customers has been paid. The provisions of section 6045 of the Internal Revenue Code of 1986, as amended through December 31, 1987, which define terms and provide the requirements that a statement be furnished to the customer shall apply.

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

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

Subd. 6. Real property holdings of aliens. Every person and corporation required to make a return under section 6039C (relating to information return on a foreign person holding a United States real property interest) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall make a similar return for the commissioner for foreign persons holding a Minnesota real property interest.

Subd. 7. Unemployment compensation. Every person who makes payments of unemployment compensation aggregating \$10 or more to any individual during any calendar year and who is required to make and file a return pursuant to section 6050B of the Internal Revenue Code of 1986 as amended through December 31, 1987, shall file with the commissioner of revenue a copy of such return.

Subd. 8. Failure to file return. In the case of each failure to file, with the commissioner, a return required by this section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the person failing to file such return shall pay to the commissioner a penalty of \$50 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000. If one or more failures to file a return are due to intentional disregard of the filing requirement, then with respect to the failures the penalty imposed under the preceding sentence shall not be less than an amount equal to

(a) in the case of a return not described in clause (b) or (c), ten percent of the aggregate amount of the items required to be reported,

(b) in the case of a return required to be filed under subdivision 3, five percent of the gross proceeds required to be reported,

(c) in the case of a return required to be filed under subdivision 9 relating to direct sales, \$100 for each failure; however, the total amount imposed on the delinquent person for all intentional failures during any calendar year shall not exceed \$50,000. The penalty shall be collected in the same manner as any delinquent income tax.

Subd. 9. Payments of remuneration for services and direct sales. Every person who is required to make a return under section 6041A (relating to information returns regarding payments of remuneration for services and direct sales) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall file with the commissioner a copy of the return containing the information required under that section, and the provisions of that section shall govern 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).

Subd. 10. Returns relating to social security benefits. The appropriate federal official who is required to make a return under section 6050F (relating to social security benefits) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall file with the commissioner a copy of the return containing the information required under that section.

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 1986, as amended through December 31, 1987, 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: (2394-38) 1933 c 405 s 38; Ex1937 c 49 s 22; 1941 c 550 s 14; 1951 c 609 s 3,4; 1951 c 648 s 4; 1959 c 593 s 1; 1965 c 244 s 1; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1981 c 60 s 19,20; 1981 c 343 s 14-16; 1982 c 424 s 113; 1982 c 523 art 1 s 40; art 40 s 14; 1983 c 207 s 21-23,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 4,5,8; art 3 s 6; 1Sp1985 c 14 art 1 s 49; art 21 s 38,39,49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 3 s 16; 1987 c 268 art 1 s 95,96,126; 1988 c 719 art 1 s 15; art 3 s 12

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 15th day

of April, following the close of the calendar year, except that returns of corporations shall be filed on the 15th 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 15th day of the fourth month following the close of such fiscal year, except that returns of corporations shall be filed on the 15th 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 15th 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 15th 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 15th 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 15th 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 15th 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 15th day of the ninth month following the close of the taxable year.

(4b) If a corporation has been divested from a unitary group and files a return for a fractional part of a year in which it was a member of a unitary business that files a combined report under section 290.34, subdivision 2, the divested corporation's return must be filed on the 15th day of the third month following the close of the common accounting period that includes the fractional 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 the commissioner's 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 the commissioner may extend the period as provided in section 6081 of the Internal Revenue Code of 1986, as amended through December 31, 1987. The commissioner 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 the taxpayer, 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: (2394-36) 1933 c 405 s 39; Ex1937 c 49 s 23; 1949 c 734 s 12; 1951 c 607

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s 1; 1953 c 622 s 1; 1955 c 2 s 1; 1959 c 72 s 1; 1961 c 100 s 1; 1967 c 113 s 1; 1981 c 178 s 90; 1981 c 343 s 17; 1982 c 523 art 1 s 41; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1985 c 210 art 2 s 6; 1985 c 229 s 3; 1Sp1985 c 14 art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s. 97,126; 1988 c 719 art 3 s 12

290.43 RETURNS, WHERE FILED.

The returns required to be made under sections 290.37 to 290.39 and 290.41 shall be filed at the commissioner's office in St. Paul, or such other place as the commissioner may designate.

History: (2394-40) 1933 c 405 s 40; 1955 c 168 s 1; 1981 c 343 s 18; 1986 c 444

290.431 NONGAME WILDLIFE CHECKOFF.

Every individual who files an income tax return or property tax refund claim form may designate on their original return that \$1 or more shall be added to the tax or deducted from the refund that would otherwise be payable by or to that individual and paid into an account to be established for the management of nongame wildlife. The commissioner of revenue shall, on the income tax return and the property tax refund claim form, notify filers of their right to designate that a portion of their tax or refund shall be paid into the nongame wildlife management account. The sum of the amounts so designated to be paid shall be credited to the nongame wildlife management account for use by the nongame program of the section of wildlife in the department of natural resources. All interest earned on money accrued in the nongame wildlife management account shall be credited to the account by the state treasurer. The commissioner of natural resources shall submit a work program for each fiscal year and semiannual progress reports to the legislative commission on Minnesota resources in the form determined by the commission. None of the money provided in this section may be expended unless the commission has approved the work program.

The state pledges and agrees with all contributors to the nongame wildlife management account to use the funds contributed solely for the management of nongame wildlife projects and further agrees that it will not impose additional conditions or restrictions that will limit or otherwise restrict the ability of the commissioner of natural resources to use the available funds for the most efficient and effective management of nongame wildlife.

History: 1980 c 607 art 1 s 24; 1981 c 356 s 340; 1982 c 523 art 1 s 42; 1983 c 342 art 1 s 35; 1984 c 514 art 2 s 28; 1986 c 383 s 14

NOTE: The term "legislative commission on Minnesota resources" will be changed to "Minnesota future resources commission" upon the approval of the constitutional amendment proposed in Laws 1988, chapter 690, article 1, section 1.

290.44 PAYMENT OF TAX, WHO MUST PAY.

The taxes imposed by this chapter, and interest and penalties imposed with respect thereto, shall be paid by the taxpayer upon whom imposed, except in the following cases:

(1) The tax due from a decedent for that part of the taxable year in which the decedent died during which the decedent was alive and the taxes, interest, and penalty due for any and all prior years shall be paid by the decedent's personal representative, if any. If there is no personal representative, the taxes, interest, and penalty shall be paid by the transferees, as defined in section 290.29, subdivision 3, to the extent they receive property from the decedent;

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

(3) The tax due from the estate of a decedent shall be paid by the personal representative thereof;

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

(5) The tax due from a taxpayer whose business or property is in charge of a

receiver, trustee in bankruptcy, assignee, or other conservator, shall be paid by the person in charge of such business or property so far as the tax is due to the income from such business or property.

History: (2394-41) 1933 c 405 s 41; 1975 c 349 s 30; 1981 c 343 s 19; 1983 c 301 s 180; 1986 c 444

290.45 PAYMENT OF TAX, TIME FOR.

Subdivision 1. **Date due.** The tax imposed by this chapter shall be paid to the commissioner of revenue at the time fixed for filing the return on which the tax is based.

Subd. 2. **Extensions.** At the request of the taxpayer, and for good cause shown, the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid together with interest at the rate specified in section 270.75 on or before the date of the expiration of the period of the extension.

Subd. 2a. [Repealed, 1980 c 419 s 46]

Subd. 3. **Payment before date due.** A tax imposed by this chapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

Subd. 4. **Tax due of \$1 or less.** Notwithstanding any other provision of law, any taxpayer whose unpaid liability for income taxes, as reflected upon the return prepared by said taxpayer, is \$1 or less, need not pay such amount.

History: (2394-42) 1933 c 405 s 42; 1941 c 335 s 1; 1941 c 550 s 15; 1949 c 734 s 15; 1951 c 607 s 2; Ex1957 c 1 art 6 s 1; 1961 c 213 art 2 s 1; 2Ex1961 c 1 s 2,3; 1967 c 116 s 1; 1969 c 160 s 1; 1969 c 325 s 3; 1971 c 38 s 1; 1973 c 582 s 3; 1975 c 377 s 11; 1981 c 178 s 91; 1982 c 523 art 1 s 43; art 2 s 28; 1983 c 207 s 24; 1984 c 514 art 2 s 29; 1987 c 268 art 1 s 98,99

290.46 EXAMINATION OF RETURNS; ASSESSMENTS, REFUNDS.

The commissioner shall, as soon as practicable after the return is filed, examine the same and make any investigation or examination of the taxpayer's records and accounts that the commissioner may deem necessary for determining the correctness of the return. The tax computed by the commissioner on the basis of such examination and investigation shall be the tax to be paid by such taxpayer. If the tax found due shall be greater than the amount reported as due on the taxpayer's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the commissioner within 60 days after notice of the amount and demand for its payment shall have been mailed to the taxpayer by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the taxpayer on the return which have not yet been paid shall be paid to the commissioner within 60 days after notice of the amount thereof and demand for payment shall have been mailed to the taxpayer by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the taxpayer's return, the excess shall be refunded to the taxpayer in the manner provided by section 290.50 (except that no demand therefor shall be necessary), if the taxpayer has already paid the whole of such tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in section 290.50.

The commissioner, on examining returns of a taxpayer for more than one year, may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by sections 290.46 to 290.48 shall be in such form as the commissioner may determine (including a statement) and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the taxpayer at the address given in the return, or to the taxpayer's last known address.

In cases where there has been an overpayment of a self-assessed liability as shown on the return filed by the taxpayer, the commissioner may refund such overpayment to the taxpayer and no demand therefor shall be necessary; further, written findings by the commissioner, notice by mail to the taxpayer and certificate for refundment by the commissioner shall not be necessary and the provisions of section 270.10, in such case, shall not be applicable.

The commissioner may audit and adjust the taxpayer's computation of federal taxable income to make it properly conform with the provisions of section 290.01, subdivisions 19 to 19e, or the items of federal tax preferences or federal credit amounts to make them properly conform with the provisions of this chapter.

History: (2394-43) 1933 c 405 s 43; 1939 c 446 s 21; 1947 c 635 s 13; 1957 c 764 s 1; Ex1959 c 58 s 1; 1965 c 255 s 1; 1969 c 307 s 1; 1978 c 767 s 19; 1981 c 178 s 92; 1981 c 343 s 20; 1983 c 342 art 1 s 36; 1984 c 514 art 2 s 30; 1986 c 444; 1987 c 268 art 1 s 100

290.47 ASSESSMENT; FAILURE TO FILE RETURN, FALSE OR FRAUDULENT RETURN FILED.

Any person or corporation required by this chapter to file any return who shall fail to do so within the time prescribed by this chapter or by rules under the authority thereof, or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, shall, on the written demand of the commissioner, file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within that time to file such return, or corrected return, the commissioner shall make for the taxpayer a return, or corrected return, from the commissioner's own knowledge and from such information as the commissioner can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 60 days after the commissioner has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

History: (2394-44) 1933 c 405 s 44; Ex1937 c 49 s 30; 1941 c 550 s 16; 1978 c 767 s 20; 1985 c 248 s 70; 1986 c 444

290.48 DELINQUENT TAXES, COLLECTION.

Subdivision 1. [Repealed, 1982 c 523 art 2 s 49]

Subd. 2. [Repealed, 1982 c 523 art 2 s 49]

Subd. 3. **Collection jeopardized by delay.** The commissioner may proceed under the provisions of section 270.70 on having reasonable grounds for believing that the collection of any taxes, interest, or penalties due under this chapter will be jeopardized by delays incident to other methods of collection; and, in such cases, no preliminary notice and demand shall be required.

Subd. 4. **Assessment jeopardized by delay.** If the commissioner has reasonable grounds for believing that a taxpayer is about to leave, or take property from, this state with the purpose of evading the tax imposed by this chapter, or that the collection of the tax will be jeopardized by delays incident to other methods of collection, the commissioner may immediately declare the taxpayer's taxable year at an end and assess a tax on the basis of the commissioner's own knowledge or information available to the commissioner, mail the taxpayer written notice of the amount thereof, at the taxpayer's last known address, demand its immediate payment; and, if payment is not immediately made, collect the tax by any method prescribed in chapter 270, except that it need not await the expiration of the periods of time therein specified.

Subd. 5. Ordinary action at law or in equity. In addition to all other methods authorized for the collection of the tax, it may be collected in an ordinary action at law or in equity by the state against the taxpayer. In any action commenced pursuant to this subdivision, upon the filing of an affidavit of default, the court administrator of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 6. [Repealed, 1983 c 15 s 33]

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

Subd. 8. Tax presumed valid. The tax, as assessed by the commissioner, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its incorrectness or invalidity. Any statement filed by the commissioner with the court administrator of court, or any other certificate by the commissioner of the amount of the tax and penalties as determined or assessed by the commissioner, shall be admissible in evidence and shall establish prima facie the facts set forth therein.

Subd. 9. [Repealed, 1982 c 523 art 2 s 49]

Subd. 10. Presumptions where owner of large amount of cash is not identified. (a) If the individual who is in physical possession of cash in excess of \$10,000 does not claim such cash, or does not claim it belongs to another person whose identity the commissioner can readily ascertain and who acknowledges ownership of such cash, then, for purposes of subdivisions 3 and 4, it shall be presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

(b) In the case of any assessment resulting from the application of clause (a), the entire amount of the cash shall be treated as taxable income for the taxable year in which the possession occurs, such income shall be treated as taxable at an eight percent rate, and except as provided in clause (c), the possessor of the cash shall be treated (solely with respect to the cash) as the taxpayer for purposes of this chapter and the assessment and collection of the tax.

(c) If, after an assessment resulting from the application of clause (a), the assessment is abated and replaced by an assessment against the owner of the cash, the later assessment shall be treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment.

(d) For purposes of this subdivision, the definitions contained in section 6867 of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall apply.

History: (2394-45) 1933 c 405 s 45; 1957 c 763 s 1,2; 1959 c 367 s 3-5; 1959 c 596 s 1; 1965 c 464 s 1; 1969 c 305 s 1; 1978 c 674 s 60; 1978 c 767 s 21,22; 1981 c 178 s 93; 1982 c 523 art 2 s 29-32; 1983 c 207 s 25,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1Sp1986 c 3 art 1 s 82; 1987 c 268 art 1 s 101; 1988 c 719 art 3 s 12

290.49 TIME LIMIT ON ASSESSMENT, COLLECTION.

Subdivision 1. Assessment, generally. Except as otherwise provided in this chapter the amount of taxes assessable shall be assessed within three and one-half years after the return is filed. Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by mail to the post office address given in the return, or to the taxpayer's last known address, and the record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Subd. 2. Assessment, court proceedings; income in respect of decedent, income to trustee, fiduciary, corporation. In the case of income received during the lifetime of a decedent, or by the decedent's estate during the period of administration, or by a trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by a corporation, the tax shall be assessed within 18 months, and any proceeding in court for the collection of such tax shall be begun within two years after written request for such assessment (filed after the return is made and in such form as the commissioner may prescribe) by the personal representative or other fiduciary representing the estate of such decedent, or by the trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by the corporation, but except as provided in subdivision 8, no assessment shall be made after the expiration of 3-1/2 years after the return was filed, and no action shall be brought after the expiration of four years after the return was filed.

This subdivision shall not apply in the case of a corporation unless

- (1) such written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of such 18-months period; and
- (2) the dissolution is in good faith begun before the expiration of such 18-months period; and
- (3) the dissolution is completed.

Subd. 3. Omission in excess of 25 percent. If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within 6-1/2 years after the return was filed.

For purposes of this subdivision, the term "gross income" shall mean gross income as defined in section 290.37, subdivision 1, clause (c).

Subd. 4. Omission of corporate liquidation proceeds. If the taxpayer omits from gross income an amount properly includable therein under section 290.134, as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within 6-1/2 years after the return was filed.

Subd. 5. Computation of time. For the purposes of this section and of section 290.50, a return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day.

Subd. 6. No return or false or fraudulent return. When a taxpayer files a false or fraudulent return with intent to evade tax or when a taxpayer fails to file a return the tax may be assessed at any time, and a proceeding in court for the collection of the tax must be begun within five years after the assessment.

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.

Subd. 8. Consent to extend time. Where before the expiration of the time prescribed in subdivisions 1 and 2 for the assessment of the tax, the commissioner and the taxpayer consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The period provided for the carryback of any amount of loss or credit is also extended as provided in the agreement, notwithstanding any other law to the contrary.

Subd. 9. [Repealed, 1980 c 419 s 46]

Subd. 10. Incorrect determination of federal adjusted gross income. Notwithstanding any other provision of this chapter, if a taxpayer whose gross income is determined under section 290.01, subdivisions 20 to 20f, omits from income such an amount as

will under the Internal Revenue Code of 1986, as amended through December 31, 1987 extend the statute of limitations for the assessment of federal income taxes; or otherwise incorrectly determines the taxpayer's federal adjusted gross income resulting in adjustments by the Internal Revenue Service then the period of assessment and determination of tax shall be the same as that under the Internal Revenue Code of 1986, as amended through December 31, 1987. When a change is made to federal income during the extended time provided under this subdivision, the provisions under section 290.56 regarding additional extensions apply.

Subd. 11. Suspension of time; bankruptcy proceeding. The period of time during which a tax must be assessed or collection proceedings commenced under this chapter shall be suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after notice to the commissioner of revenue 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.

History: (2394-46) 1933 c 405 s 46; Ex1936 c 87 s 1; Ex1937 c 49 s 24; 1939 c 59 s 2; 1939 c 446 s 14; 1941 c 550 s 1; 1943 c 656 s 15; 1945 c 604 s 12; 1947 c 635 s 14; 1949 c 734 s 13; 1951 c 269 s 1; 1951 c 649 s 1-4; 1955 c 125 s 1; 1955 c 128 s 1; 1961 c 213 art 4 s 6; 1961 c 505 s 1,2; 1961 c 509 s 1; 1961 c 511 s 1; 1969 c 718 s 1; 1971 c 769 s 2; 1973 c 21 s 1; 1973 c 711 s 3; 1975 c 349 s 29,30; 1977 c 376 s 13; 1978 c 674 s 33; 1980 c 419 s 24; 1980 c 607 art 1 s 25,32; 1981 c 60 s 27; 1981 c 178 s 94,95; 1982 c 523 art 1 s 44-46; art 40 s 14; 1983 c 15 s 21; 1983 c 180 s 10; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1985 c 101 s 12; 1Sp1985 c 14 art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 126; 1988 c 719 art 3 s 12

290.491 TAX ON GAIN; DISCHARGE IN BANKRUPTCY.

(a) 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.

(b) Income realized on a sale or exchange 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 1986, as amended through December 31, 1987. This paragraph applies only to the extent that the gain is includable in federal taxable income or in the computation of the alternative minimum taxable income under section 290.091 for purposes of the alternative minimum tax. The amount of the exemption is limited to the excess of the taxpayer's (1) liabilities over (2) the total assets and any exclusion claimed under section 108 of the Internal Revenue Code of 1986, as amended through December 31, 1987, determined immediately before application of this paragraph.

(c) For purposes of this section, any tax due under this chapter specifically includes, but is not limited to, tax imposed under sections 290.02 and 290.03 on income derived from a sale or exchange, whether constituting gain, discharge of indebtedness or recapture of depreciation deductions, or the alternative minimum tax imposed under section 290.091.

History: 1Sp1985 c 14 art 1 s 50; 1986 c 398 art 21 s 4; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 102,126; 1988 c 719 art 1 s 16; art 3 s 12

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 273.1314, subdivision 10a, 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 federal gross income, items of tax preference, deductions, credits, or a renegotiation, or files a copy of the taxpayer's 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 the taxpayer's 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.

Subd. 3. Exceptions. This section shall not be construed so as to disallow:

(a) a net operating loss carryback to any taxable year authorized by section

290.095 or section 172 of the Internal Revenue Code of 1986, as amended through December 31, 1987, but the refund or credit shall be limited to the amount of overpayment arising from the carryback;

(b) a capital loss carryback by a corporation under Minnesota Statutes 1986, section 290.16, provided that the claim for refund or credit is made prior to the expiration of the 15th day of the 45th month following the end of the taxable year of the net capital loss which results in the carryback, plus any extension of time granted for filing the return, but only if the return was filed within the extended time, and the refund or credit is limited to the amount of overpayment arising from the carryback.

Subd. 4. Consent to extend time. If the commissioner and the taxpayer have within the periods prescribed in subdivision 1 consented in writing to any extension of time for the assessment of the tax under the provisions of section 290.49, subdivision 8, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the taxpayer have consented to an extension for the assessment of the tax and six months thereafter, provided, however, that the period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

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: (2394-47) 1933 c 405 s 47; 1939 c 446 s 15,19; 1941 c 550 s 18,22; 1943 c 656 s 16; 1945 c 604 s 21; 1947 c 635 s 15; 1949 c 734 s 14; 1951 c 649 s 5-7; 1953 c 625 s 1; 1957 c 771 s 1; Ex1959 c 58 s 2; 2Ex1961 c 1 s 4; 1965 c 390 s 1; 1969 c 325 s 4; 1969 c 399 s 49; 1969 c 1041 s 1; 1971 c 37 s 1; 1973 c 20 s 1; 1973 c 492 s 14; 1975 c 349 s 18-20; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 376 s 13; 1980 c 607 art 1 s 32; 1981 c 60 s 27; 1981 c 178 s 96-98; 1982 c 523 art 4 s 1; art 40 s 14; 1983 c 15 s 22,23; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; art 5 s 1; 1985 c 210 art 1 s 11; 1Sp1985 c 13 s 309; 1Sp1985 c 14 art 1 s 51,52; art 15 s 6; art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 3 s 17; 1987 c 268 art 1 s 103,126; 1988 c 719 art 2 s 45; art 3 s 12

290.501 [Repealed, 1983 c 342 art 1 s 44]

290.51 [Repealed, 1982 c 523 art 2 s 49]

290.52 ADMINISTRATION, ENFORCEMENT.

The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this chapter and may, from time to time, make, publish, and distribute rules in enforcing its provisions. The commissioner may make a charge for copies distributed upon request and shall cause to be prepared blank forms for the returns required by this chapter. The commissioner shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required under this chapter. The commissioner may prescribe rules governing the recognition of agents, attorneys, or other persons representing claimants before the commissioner, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their case. Such commissioner may, after due notice and opportunity for hearing, suspend and disbar from further practice before the commissioner, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations.

History: (2394-50) 1933 c 405 s 50; Ex1937 c 49 s 27; 1939 c 446 s 17; 1943 c 656 s 18; 1955 c 126 s 1; 1985 c 248 s 70; 1986 c 444

290.521 ACTION TO ENJOIN INCOME TAX RETURN PREPARERS.

Subdivision 1. Authority to seek injunction. A civil action in the name of the state of Minnesota to enjoin any person who is an income tax return preparer doing business in this state from further engaging in any conduct described in subdivision 2 or from further acting as an income tax return preparer may be commenced at the request of the commissioner of revenue. Any action under this section shall be brought by the attorney general in the district court for the judicial district of the income tax return preparer's residence or principal place of business, or in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state of Minnesota against the income tax return preparer or any taxpayer.

Subd. 2. Adjudication and decrees. In any action under subdivision 1, if the court finds:

(a) that an income tax return preparer has:

(1) engaged in any conduct subject to the civil penalty under section 290.523,

(2) misrepresented the preparer's eligibility to practice before the department of revenue, or otherwise misrepresented the preparer's experience or education as an income tax return preparer,

(3) guaranteed the payment of any tax refund or the allowance of any tax credit,

or

(4) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the provisions of this chapter, and

(b) that injunctive relief is appropriate to prevent the recurrence of such conduct, the court may enjoin the person from further engaging in such conduct. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in clauses (1) to (4) of clause (a), and that an injunction prohibiting such conduct would not be sufficient to prevent the person's interference with the proper administration of this chapter, the court may enjoin the person from acting as an income tax return preparer. The court may not under this section enjoin the employer of an income tax return preparer for conduct described in clauses (1) to (4) of clause (a) engaged in by one or more of the employer's employees unless the employer was also actively involved in such conduct.

Subd. 3. Income tax return preparer defined. For purposes of this section and section 290.523, the term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this chapter, or any claim for refund of tax imposed by this chapter. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund.

A person shall not be an income tax return preparer merely because the person:

(a) furnishes typing, reproducing, or other mechanical assistance,

(b) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed,

(c) prepares as a fiduciary a return or claim for refund of any person, or

(d) prepares a claim for refund for a taxpayer in response to any tax order issued to the taxpayer.

History: 1982 c 523 art 31 s 1; 1986 c 444

290.522 ACTION TO ENJOIN PROMOTERS OF ABUSIVE TAX SHELTERS.

A civil action in the name of the state of Minnesota to enjoin any person from further engaging in conduct subject to penalty under section 290.53, subdivision 9 (relating to penalty for promoting abusive tax shelter), may be commenced at the request of the commissioner. Any action under this section shall be brought by the attorney general in the tax court or the district court for the judicial district of the

person's residence, principal place of business, or conduct subject to penalty under section 290.53, subdivision 9, or in the district court for Ramsey county. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state of Minnesota against the person.

If the court finds that the person has engaged in any conduct subject to penalty under section 290.53, subdivision 9 (relating to penalty for promoting abusive tax shelters), and that injunctive relief is appropriate to prevent recurrence of the conduct, the court may enjoin the person from engaging in the conduct or in any other activity subject to penalty under section 290.53, subdivision 9.

History: 1983 c 207 s 26; 1986 c 444

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

Subdivision 1. Willful understatement of liability. If any part of any understatement of liability with respect to any return or claim for refund is due to a willful attempt in any manner to understate the liability for a tax by a person who is an income tax return preparer with respect to the return or claim, the person shall pay to the commissioner a penalty of \$500 with respect to the return or claim. The penalty under this section may not be assessed against the employer of an income tax preparer unless the employer was actively involved in the willful attempt to understate the liability for a tax. This penalty shall be considered to be an income tax liability and may be assessed at any time as provided in section 290.49, subdivision 6. In any proceeding involving the issue of whether or not an income tax return preparer has willfully attempted in any manner to understate the liability for tax, the burden of proof in respect of the issue shall be upon the commissioner, and the return of the taxpayer may be disclosed to the income tax return preparer notwithstanding section 290.61.

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: 1982 c 523 art 31 s 2; 1985 c 210 art 2 s 7

290.53 PENALTIES, INTEREST.

Subdivision 1. Failure to pay tax. If any tax imposed by this chapter is not paid within the time herein specified for the payment thereof, or within 30 days after final determination of an appeal to the tax court relating thereto if the taxpayer is not required to pay the amount in dispute pending appeal under section 290.531, there shall be added to the amount required to be shown as tax a penalty of three percent of the amount of tax not paid on or before the date prescribed for payment of the tax if the failure is for not more than 30 days, with an additional penalty of three percent of the amount of tax remaining unpaid during each additional 30 days or fraction thereof, not exceeding 24 percent in the aggregate. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. Interest accruing upon the tax due as disclosed by the return or upon the amount determined as a deficiency from the date prescribed for the payment of the tax (if the tax is payable in installments, from the date the installment or installments become due and payable under the provisions of section 290.45, subdivision 1) shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under section 290.45, subdivision 2, interest shall be paid

at the rate specified in section 270.75 from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

Subd. 1a. **Applicability to corporations.** In the case of a corporation, the penalty under subdivision 1 does not apply when:

(1) the corporation fulfills the requirements of section 290.42, paragraph (6), relating to a seven-month extension for filing the regularly required return and the filing of a tentative return;

(2) the amount of tax, determined without regard to any prepayment of tax, shown on the tentative return, or the amount of tax paid on or before the regular due date of the return, is at least 90 percent of the amount shown on the corporation's regularly required return;

(3) any balance due shown on the regularly required return is paid on or before the due date of the return, including any extensions of time for filing; and

(4) interest on any balance due is paid at the rate specified in section 270.75 from the regular due date of the return until the tax is paid.

Subd. 2. **Failure to make and file return.** In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law, there shall be added to the tax three percent of the amount of tax not paid on or before the date prescribed for payment of the tax if the failure is for not more than 30 days with an additional five percent of the amount of tax remaining unpaid during each additional 30 days or fraction thereof during which such failure continues, not exceeding 23 percent in the aggregate.

In addition to the penalty imposed above, in the case of a failure to file a return of tax imposed by this chapter, other than a tax return of an individual, within 60 days of the date prescribed for filing of the return (determined with regard to any extensions of time for filing), the addition to tax under this subdivision shall not be less than the lesser of (i) \$200 or (ii) the greater of (a) 25 percent of the amount required to be shown as tax on the return without reduction for any payments made or refundable credits allowable against the tax or (b) \$50.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, and the amount of said tax together with the amount so added shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

Subd. 2a. **Combined penalties.** Where penalties are imposed under subdivisions 1 and 2, the penalties imposed under both subdivisions combined, except for the minimum penalty under subdivision 2, shall not exceed 38 percent in the aggregate.

Subd. 3. [Renumbered subd 3a]

Subd. 3. **Intentional disregard of law or rules.** If any part of any underpayment resulting from an additional assessment is due to negligence or intentional disregard of the provisions of this chapter or rules of the commissioner of revenue (but without intent to defraud), there shall be added to the tax an amount equal to ten percent of such additional assessment. The penalty imposed by this subdivision shall be collected as part of the tax and shall be in addition to any other penalties provided by this chapter. 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.

Subd. 3a. [Renumbered subd 3]

Subd. 3a. **Failure to file, filing false or fraudulent return; intent to evade tax; 50 percent penalty.** If any person, with intent to evade the tax imposed by this chapter, shall fail to file any return required by this chapter, or shall with such intent file a false or fraudulent return, there shall also be imposed on the person as a penalty an amount equal to 50 percent of any tax (less any amounts paid by the person on the basis of such

false or fraudulent return) found due from the person for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this section. The amount of the tax and any other penalties 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. This amount shall be in lieu of any amount determined under subdivision 3.

Subd. 4. Failure to file, filing false or fraudulent return; intent to evade tax; criminal provisions. In addition to any other penalties prescribed, (a) any person required by this chapter to make a return, who knowingly fails to make it at the time required by law, is guilty of a gross misdemeanor; (b) any person who willfully makes and subscribes any return, statement, or other document knowing it to be false as to any material matter is guilty of a felony; (c) any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter is guilty of a felony; and (d) any person who willfully fails to pay the tax at the time required by law, with the intent to evade or defeat the tax, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event the person is guilty of a felony. 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, or a complaint filed, upon any criminal offense specified in this subdivision, in the proper court within six years after the commission of the offense. The term "person" as used in this subdivision includes any officer or employee of a corporation or a member or employee of a partnership who as an officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

Subd. 5. Allocation of payments. 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.

Subd. 6. [Repealed, 1980 c 419 s 46]

Subd. 7. Interest on additional taxes. Where a taxpayer is liable for additional taxes under this chapter, interest shall be added to the additional amount, at the rate specified in section 270.75, from the due date of the original return.

Subd. 8. Interest on penalties. Where it is not specifically provided that a penalty contained in this chapter or chapter 290A will accrue interest, interest at the rate specified in section 270.75 will be added to any penalty from the date the penalty should have been paid, until paid.

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.

Subd. 10. Frivolous income tax return; penalty. If any individual files what purports to be an income tax return required by this chapter, but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is

substantially incorrect; and the conduct is due to a position which is frivolous, or a desire (which appears on the purported return) to delay or impede the administration of Minnesota income tax laws, then the individual shall pay a penalty of \$500. The penalty imposed by this subdivision shall be 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.

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 the actor 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: (2394-49) 1933 c 405 s 49; Ex1937 c 49 s 25; 1941 c 550 s 19; 1943 c 656 s 17; 1945 c 604 s 20; 1947 c 635 s 16; 1951 c 606 s 1; 1953 c 634 s 1; 1955 c 766 s 1; 1957 c 890 s 1; 1965 c 397 s 1; 1965 c 698 s 1; 1969 c 97 s 4; 1969 c 325 s 5,6; 1973 c 77 s 1,2; 1975 c 377 s 12,13; 1976 c 134 s 78; 1977 c 307 s 29; 1981 c 178 s 99,100; 1981 c 343 s 21,22; 1Sp1981 c 4 art 1 s 136; 3Sp1981 c 2 art 3 s 17; 1982 c 523 art 1 s 47; art 2 s 33,34; 1983 c 15 s 24,25; 1983 c 207 s 27-29; 1983 c 294 s 1,2; 1983 c 342 art 1 s 42; 1Sp1985 c 14 art 16 s 3; art 21 s 40; 1986 c 444; 1Sp1986 c 1 art 7 s 20; 1987 c 268 art 17 s 10-15,41

290.531 [Repealed, 1987 c 268 art 14 s 25]

290.54 TAX A PERSONAL DEBT.

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

History: (2394-48) 1933 c 405 s 48; 1975 c 349 s 30; 1976 c 181 s 2; 1977 c 386 s 7; 1982 c 523 art 2 s 35; 1986 c 444

290.56 EXAMINATION OF TAXPAYER'S RECORDS; FEDERAL RETURNS; EXTENSIONS.

Subdivision 1. Powers of examination. For the purpose of determining the correctness of any return or of determining whether or not any person should have made a return or paid taxes or for the purpose of collection of any such taxes hereunder, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determinations, or collecting such tax, including the taxpayer's retained copy of the return of income to the United States government for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the taxpayer or any other person or corporation. The commissioner shall further have power to require the attendance of any taxpayer or other person having knowledge or information in the premises to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 2. Change in federal return. If the amount of income, items of tax preference, deductions, or credits for any year of any taxpayer as reported to the Internal Revenue Service is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in income, items of tax preference, deductions, or credits, such taxpayer shall report in writing to the commissioner, in such form as the commissioner may require, such change or correction, or the results of such renegotiation, within 90 days after the final determination of the change, correction, or renegotiation, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter a copy of such amended return with the commissioner of revenue.

Subd. 3. Failure to report change or correction of federal return. If a taxpayer fails to report a change or correction or renegotiation by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or fails to file a copy of an amended return as required by subdivision 2, the commissioner may, within six years after the report should have been filed, recompute the tax, including a refund, based upon information as may be available to the commissioner, notwithstanding any period of limitations to the contrary.

Subd. 4. Report made of change or correction of federal return. If a taxpayer is required to report a change or correction or renegotiation by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or to file an amended return as required by subdivision 2 and does report the change or files a copy of the amended return, the commissioner may recompute and reassess the tax due under this chapter, including a refund (a) within one year after the report or amended return is filed with the commissioner, notwithstanding any period of limitations to the contrary or (b) within the period set forth in section 290.49, whichever period is greater. The period provided for the carryback of any amount of loss or credit is also extended as provided in this subdivision, notwithstanding any other law to the contrary.

Subd. 5. Extensions of time. Any taxpayer who consents to any extension of time for the assessment of federal income taxes shall within 90 days of the execution of such consent notify the commissioner and the period of time in which the commissioner may recompute the tax is also extended, notwithstanding any period of limitations to the contrary as follows:

- (a) For the periods provided in subdivisions 3 and 4; or
- (b) For six months following the expiration of the extended federal period of limitations where no change is made by the federal authority.

The period provided for the carryback of any amount of loss or credit is also extended as provided in this subdivision, notwithstanding any other law to the contrary.

History: (2394-51) 1933 c 405 s 51; 1957 c 767 s 1; 1963 c 355 s 13; 1969 c 1042 s 1; 1971 c 55 s 1; 1973 c 582 s 3; 1981 c 178 s 101-103; 1984 c 514 art 4 s 6,7; 1986 c 444; 1Sp1986 c 1 art 2 s 5; 1987 c 268 art 1 s 104; art 17 s 16,17

290.57 EXAMINERS, APPOINTMENT OF.

For the purpose of making such examinations and determinations, the commissioner may appoint such officers, to be known as income tax examiners, as the commissioner may deem necessary. On deeming it advisable, the commissioner may request the legislative auditor, for such period of time as the commissioner may direct, to audit such returns and conduct such examinations, and report thereon to the commissioner. Upon such request being made, the legislative auditor shall appoint such income tax examiners as the auditor may deem necessary.

History: (2394-52) 1933 c 405 s 52; 1973 c 492 s 14; 1986 c 444

290.58 EXAMINERS, POWERS OF.

The income tax examiners, whether appointed by the commissioner or by the legislative auditor, shall have all the rights and powers with reference to the examining of books, records, papers, or memoranda, subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony conferred upon the commissioner by this chapter. The clerk or court administrator of any court, upon demand of any examiner, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before the examiner. The commissioner may also issue such subpoenas. The commissioner may appoint referees to review, singly or as a board of review, the reports of the income tax examiners and petitions or complaints of taxpayers, and report on them to the commissioner. Disobedience of subpoenas issued under this chapter shall be punished by the district court of the district in which the subpoena is issued, or in the case of a subpoena issued by the commissioner, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

History: (2394-53) 1933 c 405 s 53; 1973 c 492 s 14; 1983 c 180 s 11; 1983 c 359 s 23; 1Sp1986 c 3 art 1 s 82

290.59 ADDITIONAL HELP.

The commissioner, and the legislative auditor if requested to conduct examinations as hereinbefore provided, may appoint and employ such additional help, or purchase such supplies or materials or incur such other expenditures in the enforcement of this chapter as they may deem necessary. The salaries of all officers and employees provided for in this chapter shall be fixed by the appointing authority, subject to the approval of the commissioner of administration.

History: (2394-54) 1933 c 405 s 54; 1973 c 492 s 14; 1986 c 444

290.60 [Repealed, 1981 c 178 s 119]**290.61 PUBLICITY OF RETURNS, INFORMATION.**

It shall be unlawful for the commissioner or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter, or any information concerning the taxpayer's affairs acquired from the taxpayer's records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such return or to comply with the provisions of sections 256.978, 268.12, subdivision 12, 270A.11, 469.173, subdivision 5, 290.612 and 302A.821. The commissioner may furnish a copy of any taxpayer's return, including audit documents and information, to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein. Prior to the release of any information to any official of the United States or any other state under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that the person will protect the confidentiality of the returns and information revealed thereby to the extent that it is protected under the laws of the state of Minnesota. The commissioner and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this chapter. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof. Upon request of a majority of the members of the senate tax committee or of the house tax committee or the tax study commission, the commissioner shall furnish abstracted financial information to those

committees for research purposes from returns or reports filed pursuant to this chapter, without disclosing the name, address, social security number, business identification number or any other item of information associated with any return or report which the commissioner believes is likely to identify the taxpayer. The commissioner shall not furnish the actual return, or a portion thereof, or a reproduction or copy of any return or portion thereof. "Abstracted financial information" means only the dollar amounts set forth on each line on the form including the filing status.

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

In order to locate the named payee on state warrants issued pursuant to this chapter or chapter 290A and undeliverable by the United States postal service, the commissioner may publish in any newspaper of general circulation in this state or make available to radio or television stations a list of the name and last known address of the payee as shown on the reports or returns filed with the commissioner. The commissioner may exclude the names of payees whose refunds are in an amount which is less than a minimal amount to be determined by the commissioner. The list shall not contain any particulars set forth on any report or return. The publication or announcement shall include instructions on claiming the warrants.

An employee of the department of revenue may, in connection with official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under this chapter, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this chapter.

In order to facilitate processing of returns and payments of taxes required by this chapter, or to facilitate the development, implementation, and use of computer programs and automated procedures for purposes of administering this chapter or chapter 290A, the commissioner may contract with outside vendors and may disclose private and nonpublic data to the vendor. The data disclosed will be administered by the vendor consistent with this section, and the vendor must agree to subject the vendor and the vendor's employees to the civil and criminal penalties provided by law for unlawful disclosure.

Information from a tax return required under this chapter on a holder of a license issued by the Minnesota racing commission or an owner of a horse may be provided by the commissioner to the Minnesota racing commission.

The commissioner may provide to the Minnesota supreme court and the board of professional responsibility information regarding the amount of any uncontested delinquent taxes due under this chapter or a failure to file a return due under this chapter by an attorney admitted to practice law in this state under chapter 481.

History: (2394-56) 1933 c 405 s 56; Ex1937 c 49 s 31; 1941 c 18 s 5; 1977 c 387 s 2; 1978 c 621 s 1; 1979 c 14 s 1; 1981 c 270 s 127; 1981 c 343 s 23; 1982 c 416 s 2; 1982 c 523 art 20 s 1; 1984 c 502 art 2 s 12; 1984 c 514 art 3 s 7; 1986 c 444; 1Sp1986 c 1 art 7 s 21; 1987 c 291 s 212

290.611 DISCLOSURE OF CONTENTS OF TAX RETURNS PROHIBITED IN CERTAIN INSTANCES; PENALTY.

Subdivision 1. No person who prepares, aids in the preparation, processes, consults with respect to or reviews a state or federal tax return for another person, corporation, partnership, association or other taxpayer shall divulge any particulars of such return, except to authorized employees of the department of revenue or of the Internal Revenue Service in the course of an examination, without the written permission of such person, corporation, partnership, association or other taxpayer or the legally appointed representative of such taxpayer if such taxpayer is deceased, incompetent or otherwise unable to give such consent. The provisions of this subdivision shall

not apply to disclosure by an employee of the department of revenue or of the Internal Revenue Service to other employees of such department or service where such disclosure is necessary for the effective administration of the tax laws of the state or the federal government.

Subd. 2. The provisions of this section shall not prohibit the furnishing of information by any tax return preparer to a tax return processor for the purpose of obtaining computer services in the preparation of the return.

Subd. 3. The provisions of this section shall not prohibit the furnishing of information by an owner or employee of a business firm to any other owner or employee of the same business firm, whether or not such other person became an owner or employee after such information was received.

Subd. 4. This section shall not be construed to limit the disclosure of tax returns, records, or information to the purchaser, and the purchaser's employees, in the event of the sale of a business where such business includes the preparation of state or federal income tax returns.

Subd. 5. Any person disclosing any particulars of any tax return, without the written consent of the taxpayer making such return, in violation of the provisions of this section, is guilty of a gross misdemeanor.

History: 1971 c 788 s 1,2; 1973 c 66 s 1; 1973 c 582 s 3; 1986 c 444

290.612 INQUIRIES RELATED TO APPLICATIONS FOR LIQUOR LICENSES.

Any county or municipality may request the commissioner of revenue to certify whether or not an applicant for a license to be issued pursuant to section 340A.403 or sections 340A.404 to 340A.406 is liable for any state or local taxes or assessments which were not paid when they became due. Upon a request from a county or municipality, the commissioner shall certify to the county or municipality the information requested, but shall not certify that the license applicant is liable for any unpaid state or local taxes or assessments if an administrative or court action which questions the amount or validity of the unpaid taxes or assessments has been commenced, or if the appeal period to contest the taxes or assessments has not yet expired.

History: 1978 c 621 s 2; 1985 c 305 art 12 s 5; 1Sp1985 c 16 art 2 s 26

290.62 MS 1965 [Repealed, Ex1967 c 48 s 91]

290.62 DISTRIBUTION OF REVENUES.

All revenues derived from the taxes, interest, penalties and charges under this chapter shall, notwithstanding any other provisions of law, be paid into the state treasury and credited to the general fund, and be distributed as follows:

(1) There shall, notwithstanding any other provision of the law, be paid from this general fund all refunds of taxes erroneously collected from taxpayers under this chapter as provided herein;

(2) There is hereby appropriated to the persons entitled to payment herein, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

History: Ex1967 c 48 s 90; 1969 c 399 s 28; Ex1971 c 31 art 20 s 9; 1980 c 419 s 25

290.621 [Temporary]

290.623 [Repealed, 1947 c 633 s 22]

290.65 TIME LIMITS; PENALTIES.

Subdivision 1. [Repealed, 1977 c 423 art 1 s 15]

Subd. 2. [Repealed, 1982 c 523 art 40 s 15]

Subd. 3. [Repealed, 1982 c 523 art 40 s 15]

Subd. 4. [Repealed, 1982 c 523 art 40 s 15]

Subd. 5. [Repealed, 1982 c 523 art 40 s 15]

Subd. 6. [Repealed, 1982 c 523 art 40 s 15]

Subd. 7. [Repealed, 1982 c 523 art 40 s 15]

Subd. 8. [Repealed, 1980 c 419 s 46]

Subd. 9. **Time limits, additional extension in certain cases.** The limitations of time provided by this chapter relating to income taxes, and chapter 271 relating to the tax court, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the tax court from orders relating to income taxes, and (f) appealing to the supreme court from decisions of the tax court relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is serving in the Armed Forces of the United States, or serving in support of the Armed Forces and as provided in section 7508 of the Internal Revenue Code of 1986, as amended through December 31, 1987, is serving in an area designated by the president as a combat zone or is hospitalized outside the United States as a result of injury received while serving in the combat zone during such time, and for a further period of six months.

Subd. 10. **Interest, penalties; additional extension.** No interest upon any income tax shall be assessed or collected from any individual, and no interest shall be paid upon any income tax refund to any individual, with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 9. No penalty shall be assessed or collected from any such individual by reason of failure during such period to perform any act required by the laws described in subdivision 9.

Subd. 11. **Time limit for assessment, additional extension.** The limitations of time provided for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 9, are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided.

Subd. 12. **Time limit for acts unaffected by additional extension.** Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 9, within which any act is required or permitted to be done.

Subd. 13. **Time for acts; effect of appointment of personal representative, guardian; additional extension.** The provisions of subdivision 9 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of a personal representative, or guardian, in this state, for any individual described therein except as provided in subdivision 16.

Subd. 14. [Repealed, 1980 c 419 s 46]

Subd. 15. [Repealed, 1980 c 419 s 46]

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 death, and such tax imposed for any prior taxable year which is unpaid at the date of 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 1986, as amended through December 31, 1987, defining terroristic or military action also apply.

Subd. 17. [Repealed, 1981 c 178 s 119]

History: 1943 c 107 s 1; 1945 c 604 s 15; 1947 c 635 s 17; 1951 c 648 s 1-3; 1965 c 51 s 62,63; 1965 c 698 s 3; 1967 c 76 s 1; 1971 c 45 s 1; 1973 c 582 s 3; 1975 c 349 s 30; 1976 c 134 s 78; 1977 c 307 s 29; 1980 c 419 s 26-30; 1982 c 523 art 1 s 48,49; 1983 c 207 s 43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 41,49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 126; 1988 c 719 art 3 s 12

290.66 [Repealed, 1980 c 419 s 46]

290.67 [Repealed, 1965 c 45 s 73]

290.68 [Repealed, 1980 c 419 s 46]

290.69 [Repealed, 1980 c 419 s 46]

290.91 DESTRUCTION OF RETURNS.

The commissioner of revenue is hereby authorized to destroy all tax returns, required under this chapter or chapter 290A, including audit reports, orders and correspondence relating thereto, which have been on file in the commissioner's office for a period to be determined by the commissioner. The commissioner may make copies of such returns, orders or correspondence by microfilm, photostat or other similar means and may immediately destroy the original documents from which such copies have been made. Such copies, when certified to by the commissioner, shall be admissible in evidence in the same manner and be given the same effect as the original documents destroyed.

The commissioner may destroy correspondence and documents contained in the files of the division which do not relate specifically to any tax return.

Notwithstanding the above provisions (or the provisions of section 290.61 or 290A.17) the commissioner may, utilizing such safeguards as the commissioner in the commissioner's discretion deems necessary, (1) employ a commercial photographer for the purpose of developing microfilm of returns or other documents, or (2) employ a vendor for the purpose of obtaining the vendor's services an example of which is the preparation of income tax return labels.

History: 1945 c 604 s 27; 1947 c 92 s 1; 1965 c 398 s 1; 1967 c 120 s 1; 1973 c 582 s 3; 1982 c 523 art 1 s 50; 1986 c 444

290.92 TAX WITHHELD AT SOURCE UPON WAGES.

Subdivision 1. Definitions. (1) **Wages.** For purposes of this section, the term "wages" means the same as that term is defined in section 3401(a) and (f) of the Internal Revenue Code of 1986, as amended through December 31, 1987.

(2) **Payroll period.** For purposes of this section the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by the employee's employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(3) **Employee.** For purposes of this section the term "employee" means any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, and every nonresident individual performing services within the state of Minnesota, the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation, and an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(4) **Employer.** For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, and corporations transacting business in or deriving any income from sources within the state of Minnesota for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have legal control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having legal control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under section 290.05 and further includes, but is not limited to, officers of corporations who have legal control, either individually or jointly with another or others, of the payment of the wages.

(5) **Number of withholding exemptions claimed.** For purposes of this section, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under subdivision 5, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

Subd. 2. [Repealed, Ex1967 c 32 art 14 s 12]

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 the individual's 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 the individual's salary, wages, or compensation for personal services of any kind for the employer.

(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 rules prescribed by the commissioner, 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) **Rules 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 1986, as amended through December 31, 1987, 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 1986 as amended through December 31, 1986, 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 the employer's 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 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 shall not deduct and withhold any tax under this section with respect to any vehicle fringe benefit provided to an employee if the employer has so elected for federal purposes and the requirement of and the definition contained in section 3402(s) of the Internal Revenue Code of 1986, as amended through December 31, 1987, are complied with.

Subd. 2b. [Expired]

Subd. 3. **Withholding, irregular period.** If payment of wages is made to an employee by an employer

(a) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employees by such employer, or

(b) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(c) With respect to a period beginning in one and ending in another calendar year, or

(d) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of or pays, the wages payable by another employer to such employee.

The manner of withholding and the amount to be deducted and withheld under subdivision 2a shall be determined in accordance with rules prescribed by the commis-

sioner under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

Subd. 4. Remuneration, when not "wages". If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

Subd. 4a. Tax withheld from nonresidents. (1) **"wages" paid to nonresident employees.** For the purposes of this section: The term "wages" means all remuneration taxable under this chapter including all remuneration paid to a nonresident employee for services performed in this state.

(2) **"Employer," "wages" and "employee" concerning nonresidents.** Notwithstanding any other provision of this section, under rules to be prescribed by the commissioner of revenue, for purposes of this section any person having control, receipt, custody, disposal or payment of compensation taxable under this chapter and earned by a nonresident for personal services, shall be deemed an employer, any compensation taxable under this chapter and earned by a nonresident for personal services shall be deemed wages, and a nonresident entitled to compensation taxable under this chapter and earned by the nonresident for personal services shall be deemed an employee.

When compensation for personal services is paid to a corporation in which all or substantially all of the shareholders are individual entertainers, performers or athletes who gave an entertainment or athletic performance in this state for which the compensation was paid, the compensation shall be deemed wages of the individual entertainers, performers or athletes and shall be subject to the provisions of this section. Advance payments of compensation for personal services to be performed in Minnesota shall be deemed wages and subject to the provisions of this section.

(3) **Nonresidents, employer's duty.** The employer of any employee domiciled in a state with which Minnesota has reciprocity under section 290.081 is not required to withhold under this chapter from the wages earned by such employee in this state if the employee annually submits to the employer an affidavit of residency in the form prescribed by the commissioner. The affidavit must be submitted by the later of

- (i) 30 days after the employment date or
- (ii) August 31 for calendar year 1987 and February 28 for subsequent calendar years.

Subd. 5. Exemptions. (1) **Entitlement.** An employee receiving wages shall on any day be entitled to claim withholding exemptions in a number not to exceed the number of withholding exemptions that the employee claims and that are allowable pursuant to section 3402(f)(1), (m), and (n) of the Internal Revenue Code of 1986, as amended through December 31, 1987, for federal withholding purposes.

(2) **Withholding exemption certificate.** The provisions concerning exemption certificates contained in section 3402(f)(2) and (3) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall apply.

(3) **Form of certificate.** Withholding exemption certificates shall be in such form and contain such information as the commissioner may by rule prescribe.

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

- (a) a total number of withholding exemptions in excess of ten or a number prescribed by the commissioner, or
- (b) a status that would exempt the employee from Minnesota withholding, includ-

ing 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 and affidavits of residency 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 the employer 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 entitlement to the number of exemptions or to the exempt status claimed on the withholding exemption certificate or, to verify nonresidency. 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 the commissioner, 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 leave the 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 and every person required to deduct and withhold tax under section 290.923, subdivision 2, 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 60 days.

(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, or under section 290.923, subdivision 2, 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, or person withholding tax under section 290.923, subdivision 2, 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 payors according to the amount of their tax liability and may adopt an appropriate reporting period for each class which the commissioner 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 the employer a return from the commissioner's own knowledge and from information the commissioner 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) The commissioner, in any case, on having reason to believe that the collection of the tax provided for in paragraph (1), and any added penalties and interest, if any, will be jeopardized by delay, 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, or person withholding tax under section 290.923, subdivision 2, 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, or person withholding tax under section 290.923, subdivision 2, 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, or section 290.923, subdivision 2, shall be held to be a special fund in trust for the state of Minnesota.

(b) If the employer, or person withholding tax under section 290.923, subdivision 2, 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, or person required to withhold tax under section 290.923, subdivision 2, to pay to or deposit with the commissioner, within the time provided by paragraph (1), (2), or (3), any tax required to be withheld in accordance with the provisions of subdivision 2a or 3, or section 290.923, subdivision 2, 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.

Subd. 6a. Failure to comply with withholding provisions. (a) Whenever any person who is required to deduct, withhold, pay over, or deposit any tax imposed by this chapter, at the time and in the manner prescribed by law or rules fails to deduct, withhold, or pay over such tax, or fails to make deposits or payments of such tax and is notified of any such failure by notice served upon the person in the manner prescribed for service of a summons in civil actions, then all the requirements of paragraph (b) shall be complied with. In the case of a corporation, partnership or trust, notice served upon an officer, partner or trustee shall, for purposes of this subdivision, be deemed to be notice served upon such corporation, partnership or trust and all officers, partners or trustees thereof.

(b) Any person who is required to deduct, withhold, pay over, or deposit any tax imposed by this chapter, if notice has been served upon such person in accordance with paragraph (a), shall thereafter deduct, withhold and collect such taxes and shall (not

later than the end of the second banking day after any amount of such taxes is deducted, withheld or collected) deposit such taxes in a separate account in a bank, savings bank or savings and loan association and shall keep the amount of such taxes in such account until payment over to the state of Minnesota. Any such account shall constitute and be designated as a special fund in trust for the state of Minnesota payable to the state of Minnesota by such person as trustee. It shall be the duty of such person upon whom such notice is served to notify the commissioner of revenue in writing of the name and address of the bank, savings bank or savings and loan association wherein such account is kept, together with such other information as the commissioner may require. In lieu of the trust fund account, the commissioner may, when necessary in order to secure the withholding of the tax imposed by this chapter, require an employer to file with the department of revenue a bond in an amount determined by the commissioner, or in lieu thereof, security in a form and in an amount as the commissioner determines, not to exceed twice the estimated average liability for future monthly withholding tax periods.

(c) The commissioner of revenue, on being satisfied with respect to any notification made under paragraph (a) of this subdivision that all requirements of law and rules with respect to the taxes imposed by this chapter have been and will henceforth be complied with, may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation. All notices authorized or required under this subdivision shall be in such form as the commissioner may determine.

(d) Any person who fails to comply with any provisions of this subdivision shall, in addition to any other penalties provided by law, be guilty of a gross misdemeanor, except that the provisions of this paragraph shall not apply

(1) to any person if such person shows that there was reasonable doubt as to (a) whether the law required deduction, withholding or payment of tax or (b) what person was required by law to deduct, withhold or pay; or

(2) to any person, if such person shows that the failure to comply with the provisions of paragraph (b) is due to circumstances beyond the person's control. A lack of funds existing immediately after the payment of wages (whether or not created by such payment) shall not be considered to be circumstances beyond the control of a person.

Subd. 7. Withholding statement to employee or payee and to commissioner. (1) Every person required to deduct and withhold from an employee a tax under subdivision 2a or 3, or section 290.923, subdivision 2, or who would have been required to deduct and withhold a tax under subdivision 2a or 3, or persons required to withhold tax under section 290.923, subdivision 2, determined without regard to subdivision 19, if the employee or payee had claimed no more than one withholding exemption, or who paid wages or made payments not subject to withholding under subdivision 2a or 3, or section 290.923, subdivision 2, to an employee or person receiving royalty payments in excess of \$600, or who has entered into a voluntary withholding agreement with a payee pursuant to subdivision 20, shall furnish to each such employee or person receiving royalty payments in respect to the remuneration paid by such person to such employee or person receiving royalty payments during the calendar year, on or before January 31 of the succeeding year, or, if employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if the 30-day period ends before January 31, a written statement showing the following:

(a) Name of such person,

(b) The name of the employee or payee and the employee's or payee's social security account number,

(c) The total amount of wages as that term is defined in subdivision 1(1), and/or the total amount of remuneration subject to withholding pursuant to subdivision 20, and the amount of sick pay as required under section 6051(f) of the Internal Revenue Code of 1986, as amended through December 31, 1987,

(d) The total amount deducted and withheld as tax under subdivision 2a or 3, or section 290.923, subdivision 2.

(2) The statement required to be furnished by this subdivision in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the commissioner may prescribe.

(3) The commissioner may prescribe rules providing for reasonable extensions of time, not in excess of 30 days, to employers or payers required to furnish such statements to their employees or payees under this subdivision.

(4) A duplicate of any statement made pursuant to this subdivision and in accordance with rules prescribed by the commissioner, along with a reconciliation in such form as the commissioner may prescribe of all such statements for the calendar year (including a reconciliation of the quarterly returns required to be filed pursuant to subdivision 6), shall be filed with the commissioner on or before February 28 of the year after the payments were made.

(5) The employer must submit the statements required to be sent to the commissioner on magnetic media, if the media were required to satisfy the federal reporting requirements pursuant to section 6011(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987, and the regulations issued under it.

Subd. 8. Employer liable for tax withheld. The employer shall be liable for the payment of the tax required to be deducted and withheld under subdivision 2a or subdivision 3, and shall not be liable to any person for the amount of any such payment.

Subd. 9. Determination of tax due. The commissioner may grant permission to employers, or persons withholding tax under section 290.923, subdivision 2, who do not desire to use the withholding tax tables provided in accordance with paragraph (3) of subdivision 2a, or section 290.923, subdivision 2, to determine the amount of tax to be withheld by use of a method of withholding other than withholding tax tables, provided such method will withhold from each employee or person receiving royalty payments substantially the same amount of tax as would be withheld by use of the withholding tax tables. Employers, or persons withholding tax under section 290.923, subdivision 2, who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the commissioner before the beginning of a payroll period for which the employer, or person withholding tax under section 290.923, subdivision 2, desires to withhold the tax by such other method. Applications to use such other method must be accompanied by evidence establishing the need for the use of such method.

Subd. 10. Remuneration, not in cash. In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesperson for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this section with respect to such remuneration, provided that such employer files with the commissioner such information with respect to such remuneration as the commissioner may by rule prescribe.

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, or person withholding tax under section 290.923, subdivision 2, 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, or section 290.923, subdivision 2, by the employer or other person subject to withholding. 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.

Subd. 12. Withheld amount, credit against tax. The amount deducted and withheld as tax under subdivision 2a or 3, or section 290.923, subdivision 2, during any calendar year upon the wages of any individual or person receiving royalty payments shall be allowed as a credit to the recipient of the income against the taxes imposed by this chapter or by chapter 298, for a taxable year beginning in such calendar year. If more than one taxable year begins in such calendar year, such amount shall be allowed as a credit against the taxes for the last taxable year so beginning.

Subd. 13. Refunds. (1) Where the amount of the tax withheld at the source under subdivision 2a or 3, or section 290.923, subdivision 2, exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon the taxpayer 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 the 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 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. 14. Records must be kept. Every person liable for any tax imposed by this section, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules, as the commissioner may from time to time prescribe. Any such return or statement shall include therein the information required by such rules and by the forms prescribed by the commissioner. For the purpose of determining compliance with the provisions of this subdivision, or for the purpose of collection of any taxes due under this section or section 290.923, the commissioner shall have power to examine, or cause to be examined, any books, papers, records, or memoranda relevant to making such determination, whether such books, papers, records, or memoranda are the property of or in the possession of such person or any other person or corporation. The commissioner shall further have power to require the attendance of any persons having knowledge or information in the premises, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 15. Penalties; failure to pay tax. (1) In the case of any failure to withhold a tax on wages, 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 three 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 three percent for each additional 30 days or fraction thereof during which the failure continues, not exceeding 24 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.

(1a) In the case of a failure to make and file quarterly returns with the commissioner as required by this section, there shall be added to the tax a penalty equal to three percent of the amount of tax not 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 of the amount of tax remaining unpaid during each additional 30 days or fraction thereof during which the failure continues, not exceeding 23 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.

(1b) In the case of a failure to file a return of tax imposed by this chapter within 60 days of the date prescribed for filing of the return (determined with regard to any extension of time for filing), the addition to tax under paragraph (1a) shall not be less than the lesser of (i) \$200; or (ii) the greater of (a) 25 percent of the amount required to be shown as tax on the return without reduction for any payments made or refundable credits allowable against the tax or (b) \$50.

(1c) Where penalties are imposed under paragraphs (1) and (1a), except for the minimum penalty under paragraph (1b), the combined penalty percentage shall not exceed 38 percent in the aggregate.

(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 commissioner, 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, file quarterly returns, and make payments or deposits to the commissioner of amounts withheld, as required by this section, who attempts to evade the tax by (i) willfully failing to withhold the tax, file the return, or make the payment or deposit, or (ii) willfully preparing or filing a false return, is guilty of a gross misdemeanor unless the tax involved exceeds \$300, in which event the person 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 an employer under the provisions of subdivisions 4a and 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 or a residency affidavit to an 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 or a residency affidavit 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 the actor 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, or a complaint filed, upon any criminal offense specified in this subdivision, in the proper court within six years after the commission of the offense.

Subd. 16. Agreement with secretary of treasury. The commissioner is authorized to enter into an agreement with the secretary of treasury of the United States pursuant to the provisions of United States Code, title 5, section 5517.

Subd. 17. Reciprocal arrangement with other states. The commissioner may enter into an agreement with the commissioner or other taxing officials of another state for the interpretation and administration of the acts of their several states providing for the collection of income tax at source on wages for the purpose of promoting fair and equitable administration of such acts and to eliminate duplicate withholding. Notwithstanding the provisions of section 290.61 the commissioner may furnish information on a reciprocal basis to the taxing officials of another state in order to implement the purposes set forth above.

Subd. 18. Returns; confession of judgment. Any return that is required to be filed with the commissioner of revenue under this section or section 290.923 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 the employee's preceding taxable year, and

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

Subd. 20. Voluntary withholding agreements. (a) (1) For purposes of this section, any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this section is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period. Any payment to an individual of sick pay which does not constitute wages, (determined without regard to this subdivision), shall be treated as if it were a payment of wages by an employer to an employee for a payroll period, if, at the time the payment is made a request that such sick pay be subject to withholding under this section is in effect. Sick pay means any amount which

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(2) A request for withholding, the amount withheld, and sick pay paid pursuant to certain collective bargaining agreements shall conform with the provisions of section 3402(o)(3), (4), and (5) of the Internal Revenue Code of 1986, as amended through December 31, 1987.

(b) The commissioner is authorized by rules to provide for withholding

(1) from remuneration for services performed by an employee for the employer which (without regard to this subdivision) does not constitute wages, and

(2) from any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this section, if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may by rules provide. For purposes of this section remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

Subd. 21. Extension of withholding to unemployment compensation benefits. (a) At the time an individual makes a claim for unemployment compensation benefits, the commissioner of jobs and training must notify the individual that the individual's unemployment compensation may be subject to state income taxes depending on the individual's other income and that the individual may elect to have the payments subject to withholding under this section. If the individual so requests, unemployment compensation benefits paid to the individual shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(b) 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.

Subd. 22. Liability of third parties paying or providing for wages. (a) For purposes of this section, if a lender, surety, or other person, who is not an employer with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable to the commissioner in a sum equal to the taxes required to be deducted and withheld from such wages by such employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this section to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable personally to the commissioner in a sum equal to the taxes which are not paid over to the commissioner by such employer with respect to such wages.

(c) For purposes of this subdivision, a person shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the person had exercised due diligence. A person exercises due diligence by maintaining reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the person to communicate information unless such communication is part of the individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(d) Any amounts paid to the commissioner pursuant to this subdivision shall be credited to the liability of the employer.

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 the taxpayer's 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, the commissioner 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 the employer's 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 the employee 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.

Subd. 24. Application for account number. An employer, or person withholding tax under section 290.923, desiring to engage in business in Minnesota shall file with the commissioner an application for a withholding account number on or before the due date of the first payment required to be made under the provisions of subdivision 6. An application for an account number shall be made upon a form prescribed by the commissioner and shall set forth the name of the employer or payor, the location of the place or places of business, the names, addresses and social security numbers of the owners or partners, or if the employer or payor is a corporation of the officers, or if the employer or payor is a trust of the trustees, and such other information as the

commissioner may require. The application shall be filed by the owner if the employer or payor is a natural person; by a member or partner if the employer or payor is an association or partnership; by a trustee if the employer or payor be a trust, or by a person authorized to sign the application if the employer or payor is a corporation.

No fee shall be charged for the application.

The account number is not assignable.

An employer or payor who fails to file an application for a withholding account number shall be liable to the commissioner for a penalty of \$100. The penalty shall be collected in the same manner as delinquent withholding tax is collected. The commissioner may abate this penalty.

Subd. 25. Delegation of duty of employer or payor. The delegation to an agent, fiduciary, or employee of an employer, or person withholding tax under section 290.923, of any duty prescribed for the employer or payor by this section shall not relieve the employer or payor of full compliance with such duty.

Subd. 26. Extension of withholding to certain payments where identifying number not furnished or inaccurate. (a) If, in the case of any reportable payment, (1) the payee fails to furnish the payee's social security account number to the payor, or (2) the commissioner notifies the payor that the social security account number furnished by the payee is incorrect, then the payor shall deduct and withhold from the payment a tax equal to ten percent of the payment.

(b)(1) In the case of any failure described in clause (a) (1), clause (a) shall apply to any reportable payment made by the payor during the period during which the social security account number has not been furnished.

(2) In any case where there is a notification described in clause (a)(2), clause (a) shall apply to any reportable payment made by the payor (i) after the close of the 30th day after the day on which the payor received the notification, and (ii) before the payee furnishes another social security account number.

(3)(i) Unless the payor elects not to have this subparagraph apply with respect to the payee, clause (a) shall also apply to any reportable payment made after the close of the period described in paragraph (1) or (2) (as the case may be) and before the 30th day after the close of the period.

(ii) If the payor elects the application of this subparagraph with respect to the payee, clause (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2).

(iii) The payor may elect a period shorter than the grace period set forth in subparagraph (i) or (ii) as the case may be.

(c) The provisions of section 3406 of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall apply and shall govern when withholding shall be required and the definition of terms. The term "reportable payment" shall include only those payments for personal services. No tax shall be deducted or withheld under this subdivision with respect to any amount for which withholding is otherwise required under this section. For purposes of this section, payments which are subject to withholding under this subdivision shall be treated as if they were wages paid by an employer to an employee and amounts deducted and withheld under this subdivision shall be treated as if deducted and withheld under subdivision 2a.

(d) Whenever the commissioner notifies a payor under this subdivision that the social security account number furnished by any payee is incorrect, notwithstanding section 290.61, the commissioner shall at the same time furnish a copy of the notice to the payor, and the payor shall promptly furnish the copy to the payee. If the commissioner notifies a payor under this subdivision that the social security account number furnished by any payee is incorrect and the payee subsequently furnishes another social security account number to the payor, the payor shall promptly notify the commissioner of the other social security account number furnished.

Subd. 27. Any holder of a class A, B, or D license issued by the Minnesota racing commission shall deduct and withhold ten percent of the payment of winnings which

are subject to withholding as Minnesota withholding tax. For purposes of this subdivision, the term "winnings which are subject to withholding" has the meaning given in section 3402(q)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1987. For purposes of the provisions of this section, a payment to any person of winnings which are subject to withholding 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 of winnings which are subject to withholding 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 and of each person entitled to any portion of such payment. The license holder is liable for the payment of the tax required to be withheld under this subdivision and subdivision 28 but is not liable to any person for the amount of the payment.

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 the individual's 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: 1961 c 213 art 1 s 1; Ex1961 c 91 art 2 s 1-3,7; 1963 c 355 s 15-17; 1963 c 666 s 1,2; 1965 c 464 s 2; 1965 c 884 art 1 s 7; 1967 c 42 s 2; 1967 c 587 s 1; 1967 c 902 s 1; Ex1967 c 32 art 14 s 11; 1969 c 97 s 5; 1969 c 325 s 7-9; 1969 c 326 s 1; 1969 c 399 s 29,30; 1969 c 654 s 1; 1971 c 55 s 2; 1971 c 147 s 1,2; 1971 c 510 s 1; 1971 c 514 s 1; 1971 c 729 s 1; 1971 c 769 s 2; Ex1971 c 31 art 18 s 5; 1973 c 73 s 1-8; 1973 c 492 s 14; 1973 c 501 s 4-12; 1973 c 582 s 3; 1973 c 711 s 3; 1974 c 60 s 1; 1975 c 349 s 21,22,29; 1975 c 377 s 14,15; 1976 c 2 s 110; 1976 c 181 s 2; 1977 c 111 s 1,2; 1977 c 258 s 1; 1977 c 386 s 8; 1978 c 766 s 8; 1980 c 419 s 31-34; 1980 c 607 art 1 s 32; 1981 c 13 s 1; 1981 c 60 s 21; 1981 c 178 s 104-107; 1981 c 343 s 24-29; 1Sp1981 c 4 art 2 s 29; 1982 c 523 art 1 s 51-55; art 2 s 36-38; art 28 s 4; art 40 s 10,14; 1982 c 523 art 40 s 14; 1983 c 15 s 27; 1983 c 180 s 12,13; 1983 c 207 s 30-33,43; 1983 c 247 s 123; 1983 c 294 s 3; 1983 c 342 art 1 s 37-39,43; 1984 c 502 art 2 s 13,14; 1984 c 514 art 1 s 6,8; 1985 c 101 s 13,14; 1985 c 210 art 1 s 12-15; 1985 c 248 s 70; 1Sp1985 c 14 art 1 s 53-56; art 15 s 7,8; art 16 s 4; art 21 s 42,49; 1986 c 444; 1986 c 446 s 3; 1Sp1986 c 1 art 1 s 9; art 3 s 18; 1987 c 268 art 1 s 105-110,126; art 9 s 11-20; art 17 s 18; 1988 c 719 art 1 s 17-19; art 3 s 12

NOTE: The amendments to subdivisions 6, 7, 9, 11, 12, 13, 14, 18, 24, and 25 by Laws 1987, chapter 268, article 9, sections 11 to 20 are effective for taxable years beginning after December 31, 1989. See Laws 1987, chapter 268, article 9, section 44.

290.921 [Repealed, 1978 c 721 art 5 s 1]

290.922 [Repealed, 1978 c 721 art 5 s 1]

290.923 TAX WITHHELD ON ROYALTIES UPON ORE.

Subdivision 1. Definition. In this section, "royalty" means the amount in money or value of property received by any person having any right, title, or interest in any tract of land in this state for permission to explore, mine, take out, and remove ore from the land.

Subd. 2. Collection at source. (a) Every person making payment of royalties shall deduct and withhold upon the royalties a tax as provided in this section.

(b) The amount of tax to be withheld shall be based upon tables to be prepared and distributed by the commissioner. The tables must be computed for several permissible withholding periods and shall take into account any exemptions allowed under this chapter. The amounts computed for withholding shall be such that the amount withheld for any person during the person's taxable year shall approximate in the aggregate as closely as possible the tax levied and imposed under this chapter for that taxable year upon the person's income subject to tax.

Subd. 3. **Returns; deposits.** Every person who is required to deduct and withhold tax under subdivision 2 shall file returns and make deposits as required under section 290.92, subdivision 6.

Subd. 4. **Withholding statement.** Every person required to deduct and withhold tax under this section shall furnish withholding statements as required by section 290.92, subdivision 7.

Subd. 5. **Payor liable for tax withheld.** The payor shall be liable for the payment of tax required to be deducted and withheld under subdivision 2 and shall not be liable to any person for the amount of the payment.

Subd. 6. **Determination of tax due.** The commissioner may grant permission to payors who do not wish to use the withholding tax tables provided in accordance with subdivision (2), paragraph (b), in accordance with section 290.92, subdivision 9.

Subd. 7. **Refunds.** Refunds of overpayments or credits due to overpayments of tax imposed by this section shall be allowed in accordance with section 290.92, subdivisions 11 to 13.

Subd. 8. **Records.** Every person liable for tax imposed by this section or for the collection of it shall be subject to the provisions of section 290.92, subdivision 14.

Subd. 9. **Payees incurring no income tax liability.** Notwithstanding any other provision of this section a payor shall not be required to deduct and withhold any tax under this chapter upon a payment of royalties to a payee if there is in effect with respect to the payment a withholding exemption certificate, in the form and containing the information prescribed by the commissioner, furnished to the payor by the payee certifying that the payee:

(1) incurred no liability for income tax imposed under this chapter for the payee's preceding taxable year; and

(2) anticipates incurring no liability for income tax under this chapter for the current taxable year.

The commissioner shall provide by rule for the coordination of the provisions of this subdivision with the provisions of subdivision 4.

Subd. 10. **Application for account number.** A payor desiring to engage in business in Minnesota shall file with the commissioner an application for a withholding account number in accordance with section 290.92, subdivisions 24 and 25.

History: 1987 c 268 art 9 s 21

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 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 the individual's 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.

Subd. 2. **Joint declaration.** A joint declaration may be made by husband and

wife, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if they are separated under a decree of legal separation or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife or may be divided between them.

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 allowable credits against income tax under this chapter.

Subd. 4. Commissioner to prescribe declaration. The declaration shall be in such form and shall contain such information as the commissioner may prescribe.

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 rules 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.

Subd. 8. Exception, estates and trusts. The provisions of this section shall not apply to an estate or trust.

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 the taxpayer 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 the 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 (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 required to be paid 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 amount of any installment required to be paid shall be 25 percent of the required annual payment except as provided in paragraph (c). The term "required annual payment" means the lesser of

(a) 90 percent (66-2/3 percent in the case of farmers referred to in subdivision 5, paragraph (2)), of the tax shown on the return for the taxable year or 90 percent (66-2/3 percent in the case of farmers referred to above) of the tax for the year if no return is filed, or

(b) 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

(c) An amount equal to the applicable percentage of the tax for the taxable year 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 22.5 percent in the case of the first installment, 45 percent for the second installment, 67.5 percent for the third installment, and 90 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 1986, as amended through December 31, 1987, 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 the individual's 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.

Subd. 11. Failure to pay. Any individual required under this section to pay any estimated tax, who willfully fails to pay such estimated tax at the time or times required by law or rules, shall, in addition to other penalties provided by law, be guilty of a gross misdemeanor. This subdivision shall not apply to an individual with respect to the failure to pay estimated tax if there is no addition to the tax under this section with respect to the failure to pay estimated tax.

Subd. 12. [Repealed, 1980 c 419 s 46]

History: 1961 c 213 art 1 s 2; Ex1961 c 91 art 2 s 4; 1963 c 355 s 18; 1969 c 6 s 35,36; 1969 c 325 s 10; 1969 c 399 s 31,32; 1971 c 36 s 1; 1973 c 19 s 1; 1973 c 43 s 1; 1973 c 273 s 1,2; 1973 c 492 s 14; 1975 c 377 s 16; 1978 c 772 s 62; 1980 c 419 s 35,36; 1981 c 178 s 108,109; 1981 c 343 s 30-32; 1982 c 523 art 1 s 56-58; art 40 s 11; 1983 c 207 s 34-36; 1984 c 514 art 4 s 8; 1985 c 248 s 70; 1Sp1985 c 14 art 15 s 9; art 21 s 43-48; 1986 c 444; 1Sp1986 c 1 art 1 s 9; art 3 s 19; 1987 c 268 art 1 s 111,126; 1988 c 719 art 3 s 12

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 \$500, 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.

Subd. 2. [Repealed, 1975 c 349 s 31]

Subd. 3. Contents of declaration. The declaration shall contain such pertinent information as the commissioner may by forms or rules prescribe.

Subd. 4. [Repealed, 1981 c 178 s 119]

Subd. 5. Short taxable year. A corporation with a taxable year of less than 12 months shall make a declaration in accordance with rules prescribed by the commissioner.

History: 1965 c 884 art 2 s 1; 1975 c 349 s 23; 1980 c 419 s 37; 1981 c 343 s 33; 1984 c 514 art 2 s 31; 1985 c 248 s 70; 1Sp1985 c 14 art 1 s 57; 1988 c 719 art 3 s 5

290.932 TIME FOR FILING DECLARATIONS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. General rule. The declaration of estimated tax required of corporations by section 290.931 shall be filed as follows:

If the requirements of section 290.931 are first met -
 before the 1st day of the 3rd month of the taxable year
 after the last day of the 2nd month and before the 1st day of the 6th month of the taxable year
 after the last day of the 5th month and before the 1st day of the 9th month of the taxable year
 after the last day of the 8th month and before the 1st day of the 12th month of the taxable year

The declaration shall be filed on or before -

the 15th day of the 3rd month of the taxable year

the 15th day of the 6th month of the taxable year

the 15th day of the 9th month of the taxable year

the 15th day of the 12th month of the taxable year

Subd. 2. **Amendment.** An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval.

Subd. 3. [Repealed, 1981 c 178 s 119]

Subd. 4. **Extension of time for filing returns.** The commissioner may grant a reasonable extension of time for filing any return, declaration, statement or other document required by this section. No such extension shall be for more than six months.

Subd. 5. [Repealed, 1980 c 419 s 46]

History: 1965 c 884 art 2 s 2; 1980 c 419 s 38; 1981 c 178 s 110,111

290.933 INSTALLMENT PAYMENTS OF ESTIMATED INCOME TAX BY CORPORATIONS.

Subdivision 1. **Amount and time for payment of each installment.** The amount of estimated tax with respect to which a declaration is required under section 290.931 shall be paid as follows:

(1) **Payment in four installments.** If the declaration is filed on or before the 15th day of the third month of the taxable year, the estimated tax shall be paid in four equal installments on the 15th day of the third, sixth, ninth and 12th month of the taxable year.

(2) **Payment in three installments.** If the declaration is filed after the 15th day of the third month and not after the 15th day of the sixth month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such third month, the estimated tax shall be paid in three equal installments on the 15th day of the sixth, ninth and 12th month of the taxable year.

(3) **Payment in two installments.** If the declaration of estimated tax is filed after the 15th day of the sixth month and not after the 15th day of the ninth month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such sixth month, the estimated tax shall be paid in two equal installments on the 15th day of the ninth and 12th month of the taxable year.

(4) **Payment in one installment.** If the declaration of estimated tax is filed after the 15th day of the ninth month of the taxable year, and is not required by section 290.932, subdivision 1, to be filed on or before the 15th day of such ninth month, the estimated tax shall be paid in one installment.

(5) **Late filing.** If the declaration is filed after the time prescribed in section

290.932, subdivision 1 (determined without regard to any extension of time for filing the declaration under section 290.932, subdivision 4), paragraphs (2), (3), and (4) of this subdivision 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 section 290.932, subdivision 1, 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.

Subd. 2. Amendment of declaration. If any amendment of a declaration is filed, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased (as the case may be), by the amount computed by dividing

(1) the difference between (A) the amount of estimated tax required to be paid before the date on which the amendment is made, and (B) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by

(2) the number of installments remaining to be paid on or after the date on which the amendment is made.

Subd. 3. [Repealed, 1981 c 178 s 119]

Subd. 4. Installments paid in advance. At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

History: 1965 c 884 art 2 s 3; 1975 c 349 s 24

290.934 FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

Subdivision 1. Addition to the tax. In case of any underpayment of estimated tax by a corporation, there shall be added to the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment (determined under subdivision 2) for the period of the underpayment (determined under subdivision 3).

Subd. 2. Amount of underpayment. For purposes of subdivision 1, the amount of the underpayment shall be the excess of

(1) the required installment, over

(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

Subd. 3. Period of underpayment. 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

(1) The 15th day of the third month following the close of the taxable year.

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

Subd. 3a. Required installments. (1) Except as otherwise provided in this subdivision, the amount of a required installment is 25 percent of the required annual payment.

(2) Except as otherwise provided in this subdivision, the term "required annual payment" means the lesser of:

(a) 90 percent of the tax shown on the return for the taxable year, or if no return is filed 90 percent of the tax for such year; or

(b) 100 percent of the tax shown on the return of the corporation for the preceding taxable year providing such return was for a full 12-month period, did show a liability, and was filed by the corporation.

(3) Except for determining the first required installment for any taxable year, paragraph (2), clause (b), does not apply in the case of a large corporation. The term

"large corporation" means a corporation or any predecessor corporation that had taxable net income of \$1,000,000 or more for any taxable year during the testing period. The term "testing period" means the three taxable years immediately preceding the taxable year involved. A reduction allowed to a large corporation for the first installment that is allowed by applying paragraph (2), clause (b), must be recaptured by increasing the next required installment by the amount of the reduction.

(4) In the case of a required installment, if the corporation establishes that the annualized income installment is less than the amount determined in paragraph (1), the amount of the required installment is the annualized income installment and the recapture of previous quarters' reductions allowed by this paragraph must be recovered by increasing subsequent required installments to the extent the reductions have not previously been recovered. A reduction shall be treated as recaptured for purposes of this paragraph if 90 percent of the reduction is recaptured.

(5) The "annualized income installment" is the excess, if any, of:

(a) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) for the first two months of the taxable year, in the case of the first required installment;

(ii) for the first two months or for the first five months of the taxable year, in the case of the second required installment;

(iii) for the first six months or for the first eight months of the taxable year, in the case of the third required installment; and

(iv) for the first nine months or for the first 11 months of the taxable year, in the case of the fourth required installment, over;

(b) the aggregate amount of any prior required installments for the taxable year.

(c) For the purpose of this paragraph, the annualized income shall be computed by placing on an annualized basis the taxable income for the year up to the end of the month preceding the due date for the quarterly payment multiplied by 12 and dividing the resulting amount by the number of months in the taxable year (2, 5, 6, 8, 9, or 11 as the case may be) referred to in clause (a).

(d) The "applicable percentage" used in clause (a) is:

| In the case of the following required installments: | The applicable percentage is: |
|--|----------------------------------|
| 1st | 22.5 |
| 2nd | 45 |
| 3rd | 67.5 |
| 4th | 90 |

(6)(a) If this paragraph applies, the amount determined for any installment must be determined in the following manner:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide that amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount determined under item (ii); and

(iv) multiply the tax computed under item (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(b) For purposes of this paragraph:

(i) the "base period percentage" for any period of months is the average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this paragraph shall only apply if the base period percentage for any six consecutive months of the taxable year equals or exceeds 70 percent; and

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(iv) the commissioner may provide by rule for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(c) In the case of a required installment, determined under this paragraph, if the corporation determines that the installment is less than the amount determined in paragraph (1), the amount of the required installment is the amount determined under this paragraph and the recapture of previous quarters' reductions allowed by this paragraph must be recovered by increasing subsequent required installments to the extent the reductions have not previously been recovered. A reduction shall be treated as recaptured for purposes of this paragraph if 90 percent of the reduction is recaptured.

Subd. 4. [Repealed, 1988 c 719 art 3 s 11]

Subd. 5. **Definition of tax.** The term "tax" means the tax imposed by chapter 290.

Subd. 6. [Repealed, 1981 c 178 s 119]

Subd. 7. **Failure to file an estimate.** In the case of a corporation which fails to file an estimated tax for a taxable year when one is required, the period of the underpayment shall run from the four installment dates as set forth in section 290.933, subdivision 1, clause (1), to whichever of the periods set forth in subdivision 3, clauses (1) and (2), is the earlier.

History: 1965 c 884 art 2 s 4; 1971 c 96 s 1; 1975 c 377 s 17; 1977 c 386 s 9; 1981 c 60 s 22; 1981 c 343 s 34,35; 1982 c 523 art 40 s 12; 1983 c 207 s 37; 1987 c 268 art 1 s 112; 1988 c 719 art 3 s 6-9

290.935 PAYMENT ON ACCOUNT.

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

History: 1965 c 884 art 2 s 5

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 the taxpayer 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 the 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: 1969 c 325 s 11; 1969 c 399 s 49; 1973 c 43 s 2; 1973 c 492 s 14; 1980 c 419 s 39; 1982 c 523 art 1 s 59; 1Sp1985 c 14 art 15 s 10; 1986 c 444

290.94 MS 1974 [Expired]

290.95 [Repealed, 1980 c 419 s 46]

290.96 [Repealed, 1980 c 419 s 46]

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: 1961 c 213 art 1 s 6; 1973 c 582 s 3; 1980 c 419 s 40; 1983 c 180 s 14; 1985 c 210 art 1 s 16

290.971 Subdivision 1. [Repealed, 1981 c 344 s 4]

Subd. 2. [Repealed, 1981 c 344 s 4]

Subd. 3. [Repealed, 1981 c 344 s 4]

Subd. 4. [Repealed, 1981 c 344 s 4]

Subd. 5. [Repealed, 1980 c 607 art 1 s 33; 1981 c 344 s 4]

Subd. 6. [Repealed, 1981 c 344 s 4]

Subd. 7. [Repealed, 1982 c 424 s 121; 1982 c 523 art 1 s 72]

290.972 Subdivision 1. [Repealed, 1981 c 344 s 4]

Subd. 2. [Repealed, 1981 c 344 s 4]

Subd. 3. [Repealed, 1981 c 344 s 4]

Subd. 4. [Repealed, 1981 c 344 s 4]

Subd. 5. [Repealed, 1981 c 344 s 4]

Subd. 6. [Repealed, 1981 c 344 s 4]

Subd. 7. [Repealed, 1980 c 419 s 46; 1981 c 344 s 4]

290.9725 S CORPORATION.

For purposes of this chapter, the term "S corporation" means any corporation having a valid election in effect for the taxable year under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987. An S corporation shall not be subject to the taxes imposed by this chapter, except the taxes imposed under sections 290.92, 290.9727, 290.9728, and 290.9729.

History: 1981 c 344 s 2; 1982 c 523 art 1 s 60; 1983 c 207 s 38,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; 1Sp1985 c 14 art 21 s 49; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 113; 1988 c 719 art 2 s 46

290.9726 CORPORATION TAXABLE INCOME TAXED TO SHAREHOLDERS.

Subdivision 1. General rule. The gross income of the shareholders of corporations described in section 290.9725 shall be computed under the provisions of section 290.01, subdivision 20.

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 determined 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.

Subd. 3. [Repealed, 1987 c 268 art 1 s 127]

Subd. 4. **Treatment of family groups.** Any amount of taxable income apportioned or allocated to a shareholder may be reapportioned or reallocated under the provisions of section 1366(e) of the Internal Revenue Code of 1986, as amended through December 31, 1987, if the commissioner determines it necessary in order to correctly reflect the value of services rendered to the corporation by the shareholders.

Subd. 5. [Repealed, 1987 c 268 art 1 s 127]

Subd. 6. [Repealed, 1987 c 268 art 1 s 127]

History: 1982 c 523 art 1 s 61; 1983 c 207 s 39,40,43; 1983 c 342 art 1 s 43; 1984 c 514 art 1 s 8; art 4 s 9; 1985 c 210 art 2 s 8; 1Sp1985 c 14 art 21 s 49; 1986 c 444; 1Sp1986 c 1 art 1 s 9; 1987 c 268 art 1 s 114-116; 1988 c 719 art 3 s 12

290.9727 TAX ON CERTAIN BUILT-IN GAINS.

Subdivision 1. **Tax imposed.** For a corporation electing S corporation status pursuant to section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1987, after December 31, 1986, and having a recognized built-in gain as defined in section 1374 of the Internal Revenue Code of 1986, as amended through December 31, 1987, there is imposed a tax on the taxable income of such S corporation, as defined in this section, at the rate prescribed by section 290.06, subdivision 1. This section does not apply to any corporation having an S election in effect for each of its taxable years. An S corporation and any predecessor corporation must be treated as one corporation for purposes of the preceding sentence.

Subd. 2. **Taxable income.** For purposes of this section, taxable income means taxable net income less the deduction for net operating loss carryforwards as provided by this section.

Subd. 3. **Taxable net income.** For purposes of this section, taxable net income means the lesser of:

(1) the recognized built-in gains of the S corporation for the taxable year, as determined under section 1374 of the Internal Revenue Code of 1986, as amended through December 31, 1987, subject to the modifications provided in section 290.01, subdivisions 19e and 19f, that are allocable to this state under section 290.17, 290.191, or 290.20; or

(2) the amount of the S corporation's federal taxable income, as determined under section 1374(d)(4) of the Internal Revenue Code of 1986, as amended through December 31, 1987, subject to the provisions of section 290.01, subdivisions 19c to 19f, that is allocable to this state under section 290.17, 290.191, or 290.20, less the deduction for charitable contributions in section 290.21, subdivision 3.

Subd. 4. **Net operating loss carryforward.** A net operating loss carryforward, as determined under section 290.095, arising in a taxable year before the corporation elected S corporation status, shall be allowed as a deduction against the lesser of the amounts referred to in subdivision 3, clauses (1) and (2). For purposes of determining the amount of any such loss that may be carried to later taxable years, the lesser of the amounts referred to in subdivision 3, clauses (1) and (2), shall be treated as taxable income.

History: 1988 c 719 art 2 s 47

290.9728 TAX ON CAPITAL GAINS.

Subdivision 1. **Tax imposed.** There is imposed a tax on the taxable income of a corporation that has:

(1) elected S corporation status pursuant to section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1986, before January 1, 1987;

(2) a net capital gain for the taxable year (i) in excess of \$25,000 and (ii) exceeding 50 percent of the corporation's federal taxable income for the taxable year; and

(3) federal taxable income for the taxable year exceeding \$25,000.

The tax is imposed at the rate prescribed by section 290.06, subdivision 1. For purposes of this section, "federal taxable income" means federal taxable income determined under section 1374(4)(d) of the Internal Revenue Code of 1986, as amended through December 31, 1987. This section does not apply to an S corporation which has had an election under section 1362 of the Internal Revenue Code of 1954, in effect for the three immediately preceding taxable years. This section does not apply to an S corporation that has been in existence for less than four taxable years and has had an election in effect under section 1362 of the Internal Revenue Code of 1954 for each of the corporation's taxable years. For purposes of this section, an S corporation and any predecessor corporation are treated as one corporation.

Subd. 2. Taxable income. For purposes of this section, taxable income means the lesser of:

(1) the amount of the net capital gain of the S corporation for the taxable year, as determined under sections 1222 and 1374 of the Internal Revenue Code of 1986, as amended through December 31, 1987, and subject to the modifications provided in section 290.01, subdivisions 19e and 19f, in excess of \$25,000 that is allocable to this state under section 290.17, 290.191, or 290.20; or

(2) the amount of the S corporation's federal taxable income, subject to the provisions of section 290.01, subdivisions 19c to 19f, that is allocable to this state under section 290.17, 290.191, or 290.20, less the deduction for charitable contributions in section 290.21, subdivision 3.

History: 1987 c 268 art 1 s 126; 1988 c 719 art 2 s 48

290.9729 TAX ON PASSIVE INVESTMENT INCOME.

Subdivision 1. Tax imposed. There is imposed a tax for the taxable year on the taxable income of an S corporation, if for the taxable year an S corporation has:

- (1) subchapter C earnings and profits at the close of such taxable year; and
- (2) gross receipts more than 25 percent of which are passive investment income.

The tax is imposed at the rate prescribed by section 290.06, subdivision 1. The terms "subchapter C earnings and profits," "passive investment income," and "gross receipts" have the same meanings as when used in sections 1362(d)(3) and 1375 of the Internal Revenue Code of 1986, as amended through December 31, 1987.

Subd. 2. Taxable income. For the purposes of this section, taxable income means the lesser of:

(1) the amount of the S corporation's excess net passive income, as determined under section 1375 of the Internal Revenue Code of 1986, as amended through December 31, 1987, subject to the provisions of section 290.01, subdivisions 19c to 19f, that is allocable to this state under section 290.17, 290.191, or 290.20; or

(2) the amount of the S corporation's federal taxable income, as determined under section 1374(d)(4) of the Internal Revenue Code of 1986, as amended through December 31, 1987, subject to the provisions of section 290.01, subdivisions 19c to 19f, that is allocable to this state under section 290.17, 290.191, or 290.20, less the deduction for charitable contributions in section 290.21, subdivision 3.

Subd. 3. Waiver of tax. The tax imposed by this section shall be waived if the taxpayer receives a waiver for federal income tax purposes under section 1375(d) of the Internal Revenue Code of 1986, as amended through December 31, 1987.

History: 1988 c 719 art 2 s 49; art 3 s 12

290.973 [Repealed, 1982 c 523 art 1 s 72]

290.974 RETURN OF S CORPORATION.

Every S corporation shall make a return for each taxable year during which said election is in effect stating specifically the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of

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stock owned by each shareholder at all times during the taxable year, each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information for the purposes of carrying out the provisions of sections 290.01, subdivisions 19 to 19b and 290.9725 as the commissioner may by forms and rules prescribe.

History: 1961 c 457 s 4; 1981 c 344 s 3; 1982 c 523 art 1 s 62; 1983 c 207 s 41; 1987 c 268 art 1 s 117

290.9741 ELECTION BY REMIC.

An entity having a valid election as a Real Estate Mortgage Investment Conduit (REMIC) in effect under section 860D(b) of the Internal Revenue Code of 1986, as amended through December 31, 1987, shall not be subject to the taxes imposed by this chapter except the tax imposed under section 290.92.

History: 1987 c 268 art 1 s 118; 1988 c 719 art 3 s 12

290.9742 REMIC INCOME TAXABLE TO HOLDERS OF INTERESTS.

The income of a REMIC is taxable to the holders of interests in the REMIC as provided in sections 860A to 860G of the Internal Revenue Code of 1986, as amended through December 31, 1987. The income of the holders must be computed under the provisions of this chapter.

History: 1987 c 268 art 1 s 119; 1988 c 719 art 3 s 12

- 290.975** [Repealed, 1981 c 344 s 4]
- 290.981** [Repealed, 1977 c 423 art 2 s 20]
- 290.982** [Repealed, 1977 c 423 art 2 s 20]
- 290.983** [Repealed, 1977 c 423 art 2 s 20]
- 290.984** [Repealed, 1977 c 423 art 2 s 20]
- 290.985** [Repealed, 1977 c 423 art 2 s 20]
- 290.986** [Repealed, 1977 c 423 art 2 s 20]
- 290.987** [Repealed, 1977 c 423 art 2 s 20]
- 290.988** [Repealed, 1977 c 423 art 2 s 20]
- 290.989** [Repealed, 1977 c 423 art 2 s 20]
- 290.99** [Repealed, 1977 c 423 art 2 s 20]
- 290.991** [Repealed, 1977 c 423 art 2 s 20]
- 290.992** [Repealed, 1977 c 423 art 2 s 20]