

## CHAPTER 290

## INCOME AND FRANCHISE 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.

**Subd. 3a. Trust.** The term "trust" has the meaning provided under the Internal Revenue Code of 1986, as amended through December 31, 1993, and also means designated settlement fund as defined in and taxed federally under section 468B of the Internal Revenue Code of 1986, as amended through December 31, 1993.

**Subd. 3b. Limited liability company.** For purposes of this chapter and chapter 289A, a limited liability company that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners.

**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(h) or 7704 of the Internal Revenue Code 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, as amended by section 1006(k) of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, 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. 4b. Mutual property and casualty insurance company.** "Mutual property and casualty insurance company" includes a property and casualty insurance company that was converted to a stock company after December 31, 1987, and before January 1,

1994, if the company was controlled on the date of conversion by a mutual life insurance company and so long as the company continues to be controlled by a mutual life insurance company.

**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; or

(3) which qualifies as a FSC, as defined in section 922 of the Internal Revenue Code.

**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. For purposes of section 290.06, subdivision 23, the term "taxpayer" means an individual eligible to vote in Minnesota under section 201.014.

**Subd. 6a.** [Repealed, 1989 c 28 s 26]

**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.

**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, if the qualified individual notifies the county within three months of moving out of the country that homestead status be revoked for the Minnesota residence of the qualified individual, and the property is not classified as a homestead while the individual remains a qualified individual; 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.

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. 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.

**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 289A.08, subdivision 5, 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(h) 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 net income of a real estate investment trust as defined and limited by section 856(a), (b), and (c) of the Internal Revenue Code means the real estate investment trust taxable income as defined in section 857(b)(2) of the Internal Revenue Code.

The net income of a designated settlement fund as defined in section 468B(d) of the Internal Revenue Code means the gross income as defined in section 468B(b) 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, the provisions of sections 1001, 1002, 1003, 1004, 1005, 1006, 1008, 1009, 1010, 1011, 1011A, 1011B, 1012, 1013, 1014, 1015, 1018, 2004, 3041, 4009, 6007, 6026, 6032, 6137, 6277, and 6282 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, and the provisions of sections 7811, 7816, and 7831 of the Omnibus Budget Reconciliation Act of 1989, Public Law Number 101-239, 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. The provisions of sections 4001, 4002, 4011, 5021, 5041, 5053, 5075, 6003, 6008, 6011, 6030, 6031, 6033, 6057, 6064, 6066, 6079, 6130, 6176, 6180, 6182, 6280, and 6281 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647, the provisions of sections 7815 and 7821 of the Omnibus Budget Reconciliation Act of 1989, Public Law Number 101-239, and the provisions of section 11702 of the Revenue Reconciliation Act of 1990, Public Law Number 101-508, shall become effective at the time they become effective for federal tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1988, shall be in effect for taxable years beginning after December 31, 1988. The provisions of sections 7101, 7102, 7104, 7105, 7201, 7202, 7203, 7204, 7205, 7206, 7207, 7210, 7211, 7301, 7302, 7303, 7304, 7601, 7621, 7622, 7641, 7642, 7645, 7647, 7651, and 7652 of the Omnibus Budget Reconciliation Act of 1989, Public Law Number 101-239, the provision of section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law Number 101-73, and the provisions of sections 11701 and 11703 of the Revenue Reconciliation Act of 1990, Public Law Number 101-508, shall become effective at the time they become effective for federal tax purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1989, shall be in effect for taxable years beginning after December 31, 1989. The provisions of sections 11321, 11322, 11324, 11325, 11403, 11404, 11410, and 11521 of the Revenue Reconciliation Act of 1990, Public Law Number 101-508, and the provisions of sections 13224 and 13261 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1990, shall be in effect for taxable years beginning after December 31, 1990.

The provisions of section 13431 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they became effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1991, shall be in effect for taxable years beginning after December 31, 1991.

The provisions of sections 1936 and 1937 of the Comprehensive National Energy Policy Act of 1992, Public Law Number 102-486, and the provisions of sections 13101,

13114, 13122, 13141, 13150, 13151, 13174, 13239, 13301, and 13442 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1992, shall be in effect for taxable years beginning after December 31, 1992.

The provisions of sections 13116, 13121, 13206, 13210, 13222, 13223, 13231, 13232, 13233, 13239, 13262, and 13321 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, shall become effective at the time they become effective for federal purposes.

The Internal Revenue Code of 1986, as amended through December 31, 1993, shall be in effect for taxable years beginning after December 31, 1993.

Except as otherwise provided, references to the Internal Revenue Code in subdivisions 19a to 19g 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, 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, or the fund of the regulated investment company as defined in section 851(h) of the Internal Revenue Code, making the payment; and

(iii) for the purposes of items (i) and (ii), interest on obligations of an Indian tribal government described in section 7871(c) of the Internal Revenue Code shall be treated as interest income on obligations of the state in which the tribe is located;

(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. For the purpose of this paragraph, the disallowance of itemized deductions under section 68 of the Internal Revenue Code of 1986, income tax is the last itemized deduction disallowed;

(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; and

(4) the amount of income taxes paid or accrued within the taxable year under this chapter and income taxes paid to any other state or any province or territory of Canada, to the extent allowed as a deduction in determining federal adjusted gross income. For the purpose of this paragraph, income taxes do not include the taxes imposed by sections 290.0922, subdivision 1, paragraph (b), 290.9727, 290.9728, and 290.9729.

**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;

(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;

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

(7) to the extent included in federal adjusted gross income, income realized on disposition of property exempt from tax under section 290.491; and

(8) to the extent not deducted in determining federal taxable income, the amount paid for health insurance of self-employed individuals as determined under section 162(l) of the Internal Revenue Code, except that the 25 percent limit does not apply. If the taxpayer deducted insurance payments under section 213 of the Internal Revenue Code of 1986, the subtraction under this clause must be reduced by the lesser of:

(i) the total itemized deductions allowed under section 63(d) of the Internal Revenue Code, less state, local, and foreign income taxes deductible under section 164 of the Internal Revenue Code and the standard deduction under section 63(c) of the Internal Revenue Code; or

(ii) the lesser of (A) the amount of insurance qualifying as "medical care" under section 213(d) of the Internal Revenue Code to the extent not deducted under section 162(1) of the Internal Revenue Code or excluded from income or (B) the total amount deductible for medical care under section 213(a).

**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; the District of Columbia; or Indian tribal governments;

(3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal Revenue Code;

(4) the amount of any windfall profits tax deducted under section 164 or 471 of the Internal Revenue Code;

(5) the amount of any net operating loss deduction taken for federal income tax purposes under section 172 or 832(c)(10) of the Internal Revenue Code or operations loss deduction under section 810 of the Internal Revenue Code;

(6) the amount of any special deductions taken for federal income tax purposes under sections 241 to 247 of the Internal Revenue Code;

(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;

(9) the amount of any charitable contributions deducted for federal income tax purposes under section 170 of the Internal Revenue Code;

(10) the exempt foreign trade income of a foreign sales corporation under sections 921(a) and 291 of the Internal Revenue Code;

(11) the amount of percentage depletion deducted under sections 611 through 614 and 291 of the Internal Revenue Code;

(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 amount of salary expense not allowed 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, 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 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 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;

(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;

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

(13) the amount of handicap access expenditures in the taxable year which are not allowed to be deducted or capitalized under section 44(d)(7) of the Internal Revenue Code of 1986;

(14) the amount of qualified research expenses not allowed for federal income tax purposes under section 280C(c) of the Internal Revenue Code, but only to the extent that the amount exceeds the amount of the credit allowed under section 290.068; and

(15) the amount of salary expenses not allowed for federal income tax purposes due to claiming the Indian employment credit under section 45A(a) of the Internal Revenue Code of 1986, as amended through December 31, 1993.

**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 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, 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. 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, 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, 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, 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, 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 Inter-

nal Revenue Code 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, 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, 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, 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, including insurance companies, 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.

Subd. 31. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1993.

**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; 1989 c 27 art 1 s 2; 1989 c 28 s 1-9,25; 1Sp1989 c 1 art 10 s 5,6; 1990 c 480 art 1 s 46; 1990 c 604 art 2 s 2,16; 1990 c 612 s 1; 1991 c 291 art 6 s 18-20,46; art 7 s 4; 1992 c 511 art 6 s 11,19; 1992 c 517 art 1 s 10; 1992 c 549 art 9 s 4; 1993 c 375 art 8 s 5-8,14; 1994 c 510 art 2 s 4,5; 1994 c 587 art 1 s 6-9,24

**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.** Except as provided in section 290.015, a nonresident individual is subject to the return filing requirements and to tax as provided in this chapter to the extent that the income of the nonresident individual 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 (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, 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 (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, 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 (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, 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 (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, 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, 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.** Except as provided in section 290.015, a trust or estate, whether resident or nonresident, is subject to the return filing requirements and to tax as provided in 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 (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, 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 (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, 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 (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, 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 (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, 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, 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.** Except as provided in section 290.015, a partnership is subject to the return filing requirements and to tax as provided in this chapter if 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 (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, 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 (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, 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 (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, 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.** Except as provided in section 290.015, corporations are subject to the return filing requirements and to tax as provided in 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 (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, 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 (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, 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 (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, 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; art 7 s 5-8; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

### **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 database, 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 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 or a fund of a regulated investment company, as those terms are defined in the Internal Revenue Code;

(2) an interest in money market instruments or securities as defined in section 290.191, subdivision 6, paragraphs (c) and (d);

(3) 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;

(4) an interest acquired from a person in assets described in section 290.191, subdivision 11, paragraphs (e) to (l), subject to the provisions of paragraph (c), clause (2)(A);

(5) an interest acquired from a person in the right to service, or collect income from any assets described in section 290.191, subdivision 11, paragraphs (e) to (l), subject to the provisions of paragraph (c), clause (2)(A);

(6) an interest acquired from a person in a funded or unfunded agreement to extend or guarantee credit whether conditional, mandatory, temporary, standby, secured, or otherwise, subject to the provisions of paragraph (c), clause (2)(A);

(7) 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

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

(c)(1) For purposes of paragraph (b), clauses (4) to (6), an interest in the type of assets or credit agreements described is deemed to exist at the time the owner becomes legally obligated, conditionally or unconditionally, to fund, acquire, renew, extend, amend, or otherwise enter into the credit arrangement.

(2)(A) An owner has acquired an interest from a person in paragraph (b), clauses (4) to (6), assets if:

(i) the owner at the time of the acquisition of the asset does not own, directly or indirectly, 15 percent or more of the outstanding stock or in the case of a partnership 15 percent or more of the capital or profit interests of the person from whom it acquired the asset;

(ii) the person from whom the owner acquired the asset regularly sells, assigns, or transfers interests in paragraph (b), clauses (4) to (6), assets during the 12 calendar months immediately preceding the month of acquisition to three or more persons; and

(iii) the person from whom the owner acquired the asset does not sell, assign, or transfer 75 percent or more of its paragraph (b), clauses (4) to (6), assets during the 12 calendar months immediately preceding the month of acquisition to the owner.

For purposes of determining indirect ownership under item (i), the owner is deemed to own all stock, capital, or profit interests owned by another person if the owner directly owns 15 percent or more of the stock, capital, or profit interests in the other person. The owner is also deemed to own through any intermediary parties all stock, capital, and profit interests directly owned by a person to the extent there exists a 15 percent or more chain of ownership of stock, capital, or profit interests between the owner, intermediary parties and the person.

(B) If the owner of the asset is a member of the unitary group, paragraph (b), clauses (4) to (8), do not apply to an interest acquired from another member of the unitary group. If the interest in the asset was originally acquired from a nonunitary member and at that time qualified as a section 290.015, subdivision 3, paragraph (b), asset, the foregoing limitation does not apply.

**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, referred to as 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. This paragraph is subject to the limitations contained in subdivision 3, paragraph (b), clauses (4) to (6).

(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; 1989 c 27 art 2 s 1-3; 1989 c 28 s 25; 1Sp1989 c 1 art 10 s 7,8; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

## **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 is measured by the corporations' taxable income and alternative minimum taxable income 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; 1Sp1989 c 1 art 10 s 9

## **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 and that is subject to tax for such taxable year under section 402(e) of the Internal Revenue Code.

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, 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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24*

### **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;

(c) any insurance company that is domiciled in a state or country other than Minnesota that imposes retaliatory taxes, fines, deposits, penalties, licenses, or fees and that does not grant, on a reciprocal basis, exemption from such retaliatory taxes to insurance companies or their agents domiciled in Minnesota. "Retaliatory taxes" means taxes imposed on insurance companies organized in another state or country that result from the fact that an insurance company organized in the taxing jurisdiction and doing business in the other jurisdiction is subject to taxes, fines, deposits, penalties, licenses, or fees in an amount exceeding that imposed by the taxing jurisdiction upon an insurance company organized in the other state or country and doing business to the same extent in the taxing jurisdiction; and

(d) town and farmers' mutual insurance companies and mutual property and casualty insurance companies, other than those (1) writing life insurance or (2) whose total assets on December 31, 1989, exceeded \$1,600,000,000.

Subd. 2. Except as provided in subdivisions 1 and 3, organizations, including specifically nonprofit health service plan corporations, as defined in chapter 62C, are subject to taxation under this chapter unless they are exempt from income taxation pursuant to Subchapter F of the Internal Revenue Code.

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);
- (ii) section 528 (dealing with certain homeowners associations);
- (iii) sections 511 to 515 (dealing with unrelated business income);
- (iv) section 521 (dealing with farmers' cooperatives); and

(v) section 6033(e)(2) (dealing with lobbying expense); 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 or the unrelated business taxable income, as defined in section 512 of the Internal Revenue Code, of organizations defined in section 511 of the Internal Revenue Code, provided that the tax is not imposed on:

(1) advertising revenues from a newspaper published by an organization described in section 501(c)(4) of the Internal Revenue Code; or

(2) revenues from lawful gambling authorized under chapter 349 that are expended for purposes that qualify for the deduction for charitable contributions under section 170 of the Internal Revenue Code of 1986, as amended through December 31, 1993, disregarding the limitation under section 170(b)(2), but only to the extent the contributions are not deductible in computing federal taxable income.

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 section 290.21 shall not be allowed in computing Minnesota taxable net income.

(c) The tax shall be imposed on organizations subject to federal tax under section 6033(e)(2) of the Internal Revenue Code of 1986, as amended through December 31, 1993, in an amount equal to the corporate tax rate multiplied by the amount of lobbying expenses taxed under section 6033(e)(2) which are attributable to lobbying the Minnesota state government.

Subd. 4. (a) If the Internal Revenue Service revokes, cancels or suspends, in whole or part, the exempt status of any corporation, individual, estate, trust or organization, 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, the corporation, individual, estate, trust or organization shall notify the commissioner in writing of the action within 90 days after that date.

(b) The periods of limitations contained in section 289A.42, subdivision 2, apply when there has been any action referred to in paragraph (a), notwithstanding any period of limitations to the contrary.

Subd. 5. [Repealed, 1990 c 480 art 1 s 45]

Subd. 6. [Repealed, 1994 c 587 art 1 s 25]

Subd. 7. [Repealed, 1989 c 184 art 1 s 20]

Subd. 8. **Authority to revoke exemption for failure to comply with federal law.** The commissioner may examine or investigate an entity claiming exemption under this section and subpart F of the Internal Revenue Code. The commissioner may revoke the exemption under this section for violations of federal law that would permit the commissioner of internal revenue or the secretary of the treasury to revoke the exemption under federal law, regardless of whether such action has been taken under federal law. A revocation under this subdivision is subject to administrative review under section 289A.65.

**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; 1989 c 28 s 25; 1989 c 209 art 2 s 32; 1Sp1989 c 1 art 10 s 10-12; 1990 c 480 art 1 s 28; 1990 c 604 art 2 s 3,16; 1991 c 291 art 6 s 46; art 7 s 9; 1992 c 511 art 6 s 12,19; art 7 s 13; 1994 c 587 art 1 s 10,11

## 290.06 RATES OF TAX; CREDITS.

Subdivision 1. **Computation, corporations.** The franchise tax imposed upon corporations shall be computed by applying to their taxable income the rate of 9.8 percent.

Subd. 1a. [Repealed, 1990 c 604 art 2 s 21]

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 must be computed by applying to their taxable net income the following schedule of rates:

- (1) On the first \$19,910, 6 percent;
- (2) On all over \$19,910, but not over \$79,120, 8 percent;
- (3) On all over \$79,120, 8.5 percent.

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:

- (1) On the first \$13,620, 6 percent;
- (2) On all over \$13,620, but not over \$44,750, 8 percent;
- (3) On all over \$44,750, 8.5 percent.

(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 must be computed by applying to taxable net income the following schedule of rates:

- (1) On the first \$16,770, 6 percent;
- (2) On all over \$16,770, but not over \$67,390, 8 percent;
- (3) On all over \$67,390, 8.5 percent.

(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 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, 1993, increased by the addition required for interest income from non-Minnesota state and municipal bonds under section 290.01, subdivision 19a, clause (1).

**Subd. 2d. Inflation adjustment of brackets.** (a) For taxable years beginning after December 31, 1991, 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, 1990, and before January 1, 1992. 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 and by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B) the word "1990" 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, 1990, to the 12 months ending on August 31, 1991, and in each subsequent year, from the 12 months ending on August 31, 1990, 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; factors 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 equals the lesser of (1) the excess of the tax under subdivision 1 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 the 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 the amount may be carried. The 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 under section 290.092, subdivision 1, was incurred.

(c) For taxable years beginning after December 31, 1989, qualification for a credit and computation of the amount of the credit for alternative minimum tax under paragraph (a) must be determined by computing the alternative minimum tax that would apply if section 290.092 were in effect for the taxable year.

(d) An acquiring corporation may carry over this credit from a transferor or distributor corporation in a corporate acquisition. The provisions of section 381 of the Internal Revenue Code apply in determining the amount of the carryover, if any.



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 7, clause (2), 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, modified by the addition required by section 290.01, subdivision 19a, clause (1), and the subtraction allowed by section 290.01, subdivision 19b, clause (1), 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 (c), 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. To the extent the total lump sum distribution defined in section 290.032, subdivision 1, includes lump sum distributions received in prior years or is all or in part an annuity contract, the reduction to the tax on the lump sum distribution allowed under section 290.032, subdivision 2, includes tax paid to another state that is properly apportioned to that distribution.

(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.

(g) For the purposes of this subdivision, a resident shareholder of a corporation having a valid election in effect under section 1362 of the Internal Revenue Code must be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S corporation to a state that does not measure the income of the shareholder of the S corporation by reference to the income of the S corporation. For the purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(h) For the purposes of this subdivision, a resident member of a limited liability company taxed as a partnership under the Internal Revenue Code must be considered to have paid a tax imposed on the member in an amount equal to the member's pro rata share of any net income tax paid by the limited liability company to a state that

does not measure the income of the member of the limited liability company by reference to the income of the limited liability company. For purposes of the preceding sentence, the term "net income" tax means any tax imposed on or measured by a limited liability company's net income.

**Subd. 23. Refund of contributions to political parties and candidates.** (a) A taxpayer may claim a refund equal to the amount of the taxpayer's contributions made in the calendar year to candidates and to any political party. The maximum refund for an individual must not exceed \$50 and, for a married couple filing jointly, must not exceed \$100. A refund of a contribution is allowed only if the taxpayer files a form required by the commissioner and attaches to the form a copy of an official refund receipt form issued by the candidate or party and signed by the candidate, the treasurer of the candidate's principal campaign committee, or the party chair, after the contribution was received. The receipt forms must be numbered, and the data on the receipt that are not public must be made available to the ethical practices board upon its request. A claim must be filed with the commissioner not sooner than January 1 of the calendar year in which the contribution is made and no later than April 15 of the calendar year following the calendar year in which the contribution is made. A taxpayer may file only one claim per calendar year. Amounts paid by the commissioner after June 15 of the calendar year following the calendar year in which the contribution is made must include interest at the rate specified in section 270.76.

(b) No refund is allowed under this subdivision for a contribution to any candidate unless the candidate:

(1) has signed an agreement to limit campaign expenditures as provided in section 10A.322 or 10A.43;

(2) is seeking an office for which voluntary spending limits are specified in section 10A.25 or 10A.43; and

(3) has designated a principal campaign committee.

This subdivision does not limit the campaign expenditure of a candidate who does not sign an agreement but accepts a contribution for which the contributor improperly claims a refund.

(c) For purposes of this subdivision, "political party" means a major political party as defined in section 200.02, subdivision 7, or a minor political party qualifying for inclusion on the income tax or property tax refund form under section 10A.31, subdivision 3a.

A "major or minor party" includes the aggregate of the party organization within each house of the legislature, the state party organization, and the party organization within congressional districts, counties, legislative districts, municipalities, and precincts.

"Candidate" means a congressional candidate as defined in section 10A.41, subdivision 4, or a candidate as defined in section 10A.01, subdivision 5, except a candidate for judicial office.

"Contribution" means a gift of money.

(d) The commissioner shall make copies of the form available to the public and candidates upon request.

(e) The following data collected or maintained by the commissioner under this subdivision are private: the identities of individuals claiming a refund, the identities of candidates to whom those individuals have made contributions, and the amount of each contribution.

(f) The commissioner shall report to the ethical practices board by August 1 of each year a summary showing the total number and aggregate amount of political contribution refunds made on behalf of each candidate and each political party. These data are public.

(g) The amount necessary to pay claims for the refund provided in this section is appropriated from the general fund to the commissioner of revenue.

Subd. 24. **Credit for job creation.** (a) A corporation that leases and operates a heavy maintenance base for aircraft that is owned by the state of Minnesota or one of its political subdivisions, or an engine repair facility described in section 116R.02, subdivision 6, or both, may take a credit against the tax due under this chapter.

(b) For the first taxable year when the facility has been in operation for at least three consecutive months, the credit is equal to \$5,000 multiplied by the number of persons employed by the corporation on a full-time basis at the facility on the last day of the taxable year, not to exceed the number of persons employed by the corporation on a full-time basis at the facility on the date 90 days before the last day of the taxable year. For each of the succeeding four taxable years, the credit is equal to \$5,000 multiplied by the number of persons employed by the corporation on a full-time basis at the facility on the last day of the taxable year, not to exceed the number of persons employed by the corporation on a full-time basis at the facility on the date 90 days before the last day of the taxable year.

(c) For the first taxable year in which the credit is allowed for the facility, the credit must not exceed 80 percent of the wages paid to or incurred for persons employed by the taxpayer at the facility during the taxable year. For the succeeding four taxable years, the credit must not exceed 20 percent of the wages paid to or incurred for persons employed by the taxpayer at the facility during the taxable year. For purposes of this section, "wages" has the meaning given under section 3121(b) of the Internal Revenue Code, except the limitation to the contribution and benefit base does not apply.

(d) If the credit provided under this subdivision exceeds the tax liability of the corporation for the taxable year, the excess amount of the credit may be carried over to each of the ten taxable years succeeding the taxable year. The entire amount of the credit must be carried to the earliest taxable year to which the amount may be carried. The unused portion of the credit must be carried to the following taxable year. No credit may be carried to a taxable year more than ten years after the taxable year in which the credit was earned.

**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 2 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; 1989 c 28 s 10,11,25; 1Sp1989 c 1 art 10 s 13-16; 1990 c 604 art 2 s 4,5,16; 1990 c 608 art 3 s 28; 1991 c 291 art 6 s 21-24,46; art 7 s 10; 1991 c 350 art 1 s 18; 1992 c 511 art 6 s 13,19; 1992 c 517 art 1 s 11; 1993 c 318 art 2 s 50; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 12,24

**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) 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 except that in determining whether the child qualified as a dependent, income received as an aid to families with dependent children grant or allowance to or on behalf of the child must not be taken into account in determining whether the child received more than half of the child's support from the taxpayer, and the provisions of section 32(b)(1)(D) of the Internal Revenue Code do not apply.

(b) If a child who is six years of age or less at the close of the taxable year is cared for at a licensed family day care home operated by the child's parent, the taxpayer is deemed to have paid employment-related expenses. If the child is 16 months old or younger at the close of the taxable year, the amount of expenses deemed to have been paid equals the maximum limit for one qualified individual under section 21(c) and (d) of the Internal Revenue Code. If the child is older than 16 months of age but not older than six years of age at the close of the taxable year, the amount of expenses deemed to have been paid equals the amount the licensee would charge for the care of a child of the same age for the same number of hours of care.

(c) If a married couple:

- (1) has a child one year of age or less at the close of the taxable year;
- (2) files a joint tax return for the taxable year; and

(3) does not participate in a dependent care assistance program as defined in section 129 of the Internal Revenue Code, in lieu of the actual employment related expenses paid for that child under paragraph (a) or the deemed amount under paragraph (b), the lesser of (i) the combined earned income of the couple or (ii) \$2,400 will be deemed to be the employment related expense paid for that child. The earned income limitation of section 21(d) of the Internal Revenue Code shall not apply to this deemed amount. These deemed amounts apply regardless of whether any employment-related expenses have been paid.

(d) If the taxpayer is not required and does not file a federal individual income tax return for the tax year, no credit is allowed for any amount paid to any person unless:

(1) the name, address, and taxpayer identification number of the person are included on the return claiming the credit; or

(2) if the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence does not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information required.

In the case of a nonresident, part-year resident, or a person who has earned income not subject to tax under this chapter, 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 \$13,350, \$720 maximum for one dependent, \$1,440 for all dependents;

income over \$13,350, the maximum credit for one dependent shall be reduced by \$18 for every \$350 of additional income, \$36 for all dependents.

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.** (a) For purposes of this section, "income" means the sum of the following:

(1) federal adjusted gross income as defined in section 62 of the Internal Revenue Code; 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 (m) 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) a lump sum distribution under section 402(e)(3) of the Internal Revenue Code;
- (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; and
- (xii) nontaxable scholarship or fellowship grants.

In the case of an individual who files an income tax return on a fiscal year basis, the term "federal adjusted gross income" means federal adjusted gross income reflected in the fiscal year ending in the next calendar year. Federal adjusted gross income may not be reduced by the amount of a net operating loss carryback or carryforward or a capital loss carryback or carryforward allowed for the year.

(b) "Income" does not include:

- (1) amounts excluded pursuant to the Internal Revenue Code, sections 101(a), 102, and 121;
- (2) amounts of any pension or annuity that were exclusively funded by the claimant or spouse if the funding payments were not excluded from federal adjusted gross income in the years when the payments were made;
- (3) surplus food or other relief in kind supplied by a governmental agency;
- (4) relief granted under chapter 290A; and
- (5) child support payments received under a temporary or final decree of dissolution or legal separation.

**Subd. 2b. Inflation adjustment.** The dollar amount of the income threshold at which the maximum credit begins to be reduced under subdivision 2 must be adjusted for inflation. The commissioner shall adjust the threshold amount by the percentage determined under section 290.06, subdivision 2d, for the taxable year.

**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.** [Repealed, 1990 c 480 art 1 s 45]

**Subd. 6.** [Repealed, 1994 c 587 art 1 s 25]

**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; 1989 c 28 s 12,25; 1Sp1989 c 1 art 10 s 17,18; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 25,26,46; 1992 c 511 art 6 s 19; 1994 c 587 art 1 s 13

## 290.0671 MINNESOTA WORKING FAMILY CREDIT.

**Subdivision 1. Credit allowed.** An individual is allowed a credit against the tax imposed by this chapter equal to 15 percent of the credit for which the individual is eligible under section 32 of the Internal Revenue Code.

For a nonresident or part-year resident, the credit determined under section 32 of the Internal Revenue Code must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

For a person who was a resident for the entire tax year and has earned income not subject to tax under this chapter, the credit must be allocated based on the ratio of federal adjusted gross income reduced by the earned income not subject to tax under this chapter over federal adjusted gross income.

Subd. 2. **Credit name.** The credit allowed by this section shall be known as the "Minnesota working family credit."

Subd. 3. **Reduction by alternative minimum tax liability.** The amount of the credit allowed must be reduced by the amount of the taxpayer's liability under section 290.091, determined before the credit allowed by this section is subtracted from regular tax liability.

Subd. 4. **Credit refundable.** If the amount of credit which the claimant is eligible to receive under this section exceeds the claimant's tax liability under this chapter, the commissioner shall refund the excess to the claimant.

Subd. 5. **Calculation assistance.** Upon request of the individual and submission of the necessary information, in the form prescribed by the commissioner, the department of revenue shall calculate the credit on behalf of the individual.

Subd. 6. **Appropriation.** An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund.

**History:** 1991 c 291 art 6 s 27; 1992 c 511 art 6 s 19; art 7 s 14; 1993 c 375 art 8 s 9, 14; 1994 c 587 art 1 s 24

## 290.068 CREDIT FOR INCREASING RESEARCH ACTIVITIES.

Subdivision 1. **Credit allowed.** A corporation, other than a corporation with a valid election in effect under section 1362 of the Internal Revenue Code, is allowed a credit against the portion of the franchise tax computed under section 290.06, subdivision 1, 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 amount; 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 and basic research payments as defined in section 41(b) and (e) of the Internal Revenue Code, except it does not include expenses incurred for qualified research or basic research conducted outside the state of Minnesota pursuant to section 41(d) and (e) of the Internal Revenue Code; and (ii) contributions to a nonprofit corporation established and operated pursuant to the provisions of chapter 317A 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 does not include qualified research conducted outside the state of Minnesota.

(c) "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code, except that the average annual gross receipts must be calculated using Minnesota sales or receipts under section 290.191 and the definitions contained in clauses (a) and (b) shall apply.

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 amount are adjusted in the same manner provided by section 41(f)(3) of the Internal Revenue Code.

**Subd. 6.** [Repealed, 1991 c 291 art 7 s 26]

**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; 1989 c 28 s 25; 1989 c 304 s 137; 1990 c 604 art 2 s 6,16; 1991 c 291 art 6 s 46; art 7 s 11-13; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 14,24

**NOTE:** Laws 1991, chapter 291, article 7, provides that the carryover for the credit provided under subdivision 6, that is repealed by Laws 1991, chapter 29, article 7, section 26, remains in effect for taxable years beginning before 2003.

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

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

**Subd. 2a.** [Repealed, 1991 c 291 art 7 s 26]

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

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

**Subd. 4a.** [Repealed, 1991 c 291 art 7 s 26]

**Subd. 4b.** [Repealed, 1991 c 291 art 7 s 26]

**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]

**290.0691** [Repealed, 1992 c 511 art 9 s 7]

## **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 commis-



sioner. 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 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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24*

**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]

**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 a lump sum distribution as defined in section 402(e)(3) of the Internal Revenue Code, and less any pension, annuity, or disability benefits included in federal gross income but not subject to state taxation other than the subtraction allowed under section 290.01, subdivision 19b, clause (4).

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

(c) "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 and pension, annuity, or disability benefits included in federal gross income but not subject to state taxation other than the subtraction allowed under section 290.01, subdivision 19b, clause (4).

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

(e) "Social security benefits above the second federal threshold" means the amount of social security benefits included in federal taxable income due to the provisions of section 13215 of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66.

Subd. 2. **Subtraction.** (a) A qualified individual is allowed a subtraction from federal taxable income for the greater of (1) the individual's subtraction base amount or (2) the minimum amount. The excess of the subtraction base amount over the taxable net income computed without regard to the subtraction for the elderly or disabled under section 290.01, subdivision 19b, clause (5), 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) \$12,000 for a married taxpayer filing a joint return if a spouse is a qualified individual,

- (ii) \$9,600 for a single taxpayer, and
- (iii) \$6,000 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) \$18,000 for a married taxpayer filing a joint return if both spouses are qualified individuals,
- (ii) \$14,500 for a single taxpayer or for a married couple filing a joint return if only one spouse is a qualified individual, and
- (iii) \$9,000 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.

(c) Qualified individuals who must include social security benefits above the second federal threshold in federal taxable income may claim a minimum amount equal to the lesser of

- (1) the amount of social security benefits above the second federal threshold included in federal taxable income; or
- (2) a minimum amount subject to an income phase-out.

For taxable years beginning after December 31, 1993, and before January 1, 1995, the minimum amount equals

- (i) \$3,750 for married individuals filing a joint return if both spouses are qualified individuals,
- (ii) \$3,000 for a single taxpayer or for married individuals filing a joint return if one spouse is a qualified individual, and
- (iii) \$1,875 for a married individual filing a separate return.

For taxable years beginning after December 31, 1994, and before January 1, 1996, the minimum amount equals

- (i) \$2,250 for married individuals filing a joint return if both spouses are qualified individuals,
- (ii) \$1,800 for a single taxpayer or for married individuals filing a joint return if one spouse is a qualified individual, and
- (iii) \$1,125 for married individuals filing a separate return.

For taxable years beginning after December 31, 1995, and before January 1, 1997, the minimum amount equals

- (i) \$1,000 for married individuals filing a joint return if both spouses are qualified individuals,
- (ii) \$800 for a single taxpayer or for married individuals filing a joint return if one spouse is a qualified individual, and
- (iii) \$500 for married individuals filing a separate return.

For taxable years beginning after December 31, 1996, the minimum amount is zero.

The minimum amount is reduced by 20 percent for each \$1,000 of adjusted gross income above an income threshold, but in no case may the minimum amount be reduced to less than zero. The income thresholds equal

- (i) \$75,000 for married individuals filing a joint return if both spouses are qualified individuals,
- (ii) \$60,000 for single taxpayers and for married individuals filing a joint return if only one spouse is a qualified individual, and
- (iii) \$37,500 for married individuals filing a separate return.

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; 1989 c 28 s 13,14,25; 1Sp1989 c 1 art 10 s 19; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 28,46; 1992 c 511 art 6 s 19; 1994 c 587 art 1 s 15,16

### 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.

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; 1989 c 184 art 2 s 17

**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 seven 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 Minnesota charitable contribution deduction and the medical expense deduction;

(3) for depletion allowances computed under section 613A(c) of the Internal Revenue Code, with respect to each property (as defined in section 614 of the Internal Revenue Code), to the extent not included in federal alternative minimum taxable income, the excess of the deduction for depletion allowable under section 611 of the Internal Revenue Code for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year);

(4) to the extent not included in federal alternative minimum taxable income, the amount of the tax preference for intangible drilling cost under section 57(a)(2) of the Internal Revenue Code determined without regard to subparagraph (E);

(5) 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 the amounts determined under the following clauses (1) to (3):

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

(2) an overpayment of state income tax as provided by section 290.01, subdivision 19b, clause (2), to the extent included in federal alternative minimum taxable income; and

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

(c) "Tentative minimum tax" equals seven percent of alternative minimum taxable income after subtracting the exemption amount determined under subdivision 3.

(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.

(e) "Net minimum tax" means the minimum tax imposed by this section.

(f) "Minnesota charitable contribution deduction" means a charitable contribu-

tion deduction under section 170 of the Internal Revenue Code to or for the use of an entity described in section 290.21, subdivision 3, clauses (a) to (e).

**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, as amended through December 31, 1992, 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).

**Subd. 6. Credit for prior years' liability.** (a) A credit is allowed against the tax imposed by this chapter on individuals, trusts, and estates equal to the minimum tax credit for the taxable year. The minimum tax credit equals the adjusted net minimum tax for taxable years beginning after December 31, 1988, reduced by the minimum tax credits allowed in a prior taxable year. The credit may not exceed the excess (if any) for the taxable year of

(1) the regular tax, over

(2) the greater of (i) the tentative alternative minimum tax, or (ii) zero.

(b) The adjusted net minimum tax for a taxable year equals the lesser of the net minimum tax or the excess (if any) of

(1) the tentative minimum tax, over

(2) seven percent of the sum of

(i) adjusted gross income as defined in section 62 of the Internal Revenue Code,

(ii) interest income as defined in section 290.01, subdivision 19a, clause (1),

(iii) interest on specified private activity bonds, as defined in section 57(a)(5) of the Internal Revenue Code, to the extent not included under clause (ii),

(iv) depletion as defined in section 57(a)(1), determined without regard to the last sentence of paragraph (1), of the Internal Revenue Code, less

(v) the deductions provided in subdivision 2, paragraph (a), clauses (5), items (i), (ii), and (iii), and

(vi) the exemption amount determined under subdivision 3.

In the case of an individual who is not a Minnesota resident for the entire year, adjusted net minimum tax must be multiplied by the fraction defined in section 290.06, subdivision 2c, paragraph (e). In the case of a trust or estate, adjusted net minimum tax must be multiplied by the fraction defined under subdivision 4, paragraph (b).

**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; 1Sp1989 c 1 art 10 s 20, 21; 1990 c 604 art 2 s 7; 1991 c 291 art

6 s 29,30,46; 1992 c 511 art 6 s 19; art 7 s 15,16; 1993 c 375 art 8 s 10,11; 1994 c 416 art 2 s 3; 1994 c 587 art 1 s 17,18

## 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 as defined in section 851(a) of the Internal Revenue Code of 1986 or funds of regulated investment companies as defined in section 851(h) of the Internal Revenue Code; cooperatives taxable under subchapter T of the Internal Revenue Code of 1986 or organized under chapter 308A 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 are not subject to the tax imposed in subdivision 1 or 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; or split-ups, split-offs, or spin-offs, as described in section 355 of the Internal Revenue Code; 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 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.02; 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.** [Repealed, 1Sp1989 c 1 art 10 s 46]

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

(1) the enterprise zone credits allowed by section 469.171;

(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; 1989 c 27 art 2 s 4,5; 1989 c 28 s 25; 1989 c 209 art 2 s 1; 1989 c 356 s 14; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24



**290.0921 CORPORATE ALTERNATIVE MINIMUM TAX AFTER 1989.**

Subdivision 1. **Tax imposed.** 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, for the taxable year of:

(1) 5.8 percent of Minnesota alternative minimum taxable income less the credit allowed under section 290.35, subdivision 3; over

(2) the tax imposed under section 290.06, subdivision 1, without regard to this section.

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

(b) "Alternative minimum taxable net income" is alternative minimum taxable income,

(1) less the exemption amount, and

(2) apportioned or allocated to Minnesota under section 290.17, 290.191, or 290.20.

(c) The "exemption amount" is \$40,000, reduced, but not below zero, by 25 percent of the excess of alternative minimum taxable income over \$150,000.

(d) "Minnesota alternative minimum taxable income" is alternative minimum taxable net income, less the deductions for alternative tax net operating loss under subdivision 4; charitable contributions under subdivision 5; and dividends received under subdivision 6. The sum of the deductions under this paragraph may not exceed 90 percent of alternative minimum taxable net income. This limitation does not apply to a deduction for dividends paid to or received from a corporation which is subject to tax under section 290.35 or 290.36 and which is a member of an affiliated group of corporations as defined by the Internal Revenue Code.

Subd. 3. **Alternative minimum taxable income.** "Alternative minimum taxable income" is Minnesota net income as defined in section 290.01, subdivision 19, and includes the adjustments and tax preference items in sections 56, 57, 58, and 59(d), (e), (f), and (h) of the Internal Revenue Code. If a corporation files a separate company Minnesota tax return, the minimum tax must be computed on a separate company basis. If a corporation is part of a tax group filing a unitary return, the minimum tax must be computed on a unitary basis. The following adjustments must be made.

(1) For purposes of the depreciation adjustments under section 56(a)(1) and 56(g)(4)(A) of the Internal Revenue Code, the basis for depreciable property placed in service in a taxable year beginning before January 1, 1990, is the adjusted basis for federal income tax purposes, including any modification made in a taxable year under section 290.01, subdivision 19e, or Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c).

(2) The alternative tax net operating loss deduction under sections 56(a)(4) and 56(d) of the Internal Revenue Code does not apply.

(3) The special rule for certain dividends under section 56(g)(4)(C)(ii) of the Internal Revenue Code does not apply.

(4) The special rule for dividends from section 936 companies under section 56(g)(4)(C)(iii) does not apply.

(5) The tax preference for depletion under section 57(a)(1) of the Internal Revenue Code does not apply.

(6) The tax preference for intangible drilling costs under section 57(a)(2) of the Internal Revenue Code must be calculated without regard to subparagraph (E) and the subtraction under section 290.01, subdivision 19d, clause (4).

(7) The tax preference for tax exempt interest under section 57(a)(5) of the Internal Revenue Code does not apply.

(8) The tax preference for charitable contributions of appreciated property under section 57(a)(6) of the Internal Revenue Code does not apply.

(9) For purposes of calculating the tax preference for accelerated depreciation or amortization on certain property placed in service before January 1, 1987, under section 57(a)(7) of the Internal Revenue Code, the deduction allowable for the taxable year is the deduction allowed under section 290.01, subdivision 19e.

(10) For purposes of calculating the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code, the term "alternative minimum taxable income" as it is used in section 56(g) of the Internal Revenue Code, means alternative minimum taxable income as defined in this subdivision, determined without regard to the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code.

(11) For purposes of determining the amount of adjusted current earnings under section 56(g)(3) of the Internal Revenue Code, no adjustment shall be made under section 56(g)(4) of the Internal Revenue Code with respect to (i) the amount of foreign dividend gross-up subtracted as provided in section 290.01, subdivision 19d, clause (1), (ii) the amount of refunds of income, excise, or franchise taxes subtracted as provided in section 290.01, subdivision 19d, clause (10), or (iii) the amount of royalties, fees or other like income subtracted as provided in section 290.01, subdivision 19d, clause (11).

Items of tax preference must not be reduced below zero as a result of the modifications in this subdivision.

**Subd. 3a. Exemptions.** The following entities are exempt from the tax imposed by this section:

- (1) cooperatives taxable under subchapter T of the Internal Revenue Code or organized under chapter 308 or a similar law of another state;
- (2) corporations subject to tax under section 60A.15, subdivision 1;
- (3) real estate investment trusts;
- (4) regulated investment companies or a fund thereof; and
- (5) entities having a valid election in effect under section 860D(b) of the Internal Revenue Code.

**Subd. 4. Alternative tax net operating loss.** (a) An alternative tax net operating loss deduction is allowed from alternative minimum taxable net income equal to the net operating loss deduction allowable for the taxable year under section 290.095 with the following modifications:

(1) The amount of the net operating loss deduction must not exceed 90 percent of alternative minimum taxable net income.

(2) In determining the amount of the net operating loss deduction (i) the net operating loss under section 290.095 must be adjusted as provided in paragraph (b), and (ii) for taxable years beginning after December 31, 1989, section 290.095, subdivision 3, must be applied by substituting "90 percent of alternative minimum taxable net income" for "taxable net income."

(b) The following adjustments must be made to the alternative tax net operating loss deduction under paragraph (a):

(1) For a loss year beginning after December 31, 1989, the net operating loss for each year under section 290.095 must be (i) determined with the adjustments provided in sections 56 and 58 of the Internal Revenue Code, as modified by subdivision 3 and (ii) reduced by the items of tax preference for the year determined under section 57 of the Internal Revenue Code, as modified by subdivision 3.

(2) For a loss year beginning before January 1, 1990, the amount of the net operating loss that may be carried over to taxable years beginning after December 31, 1989, equals the amount which may be carried from the loss year to the first taxable year of the taxpayer beginning after December 31, 1989.

**Subd. 5. Charitable contributions.** (a) A deduction from alternative minimum taxable net income is allowed equal to the deduction for charitable contributions under section 290.21, subdivision 3. The deduction allowable for capital gain property is lim-

ited to the adjusted basis of the property as defined in section 290.01, subdivision 19f. The term capital gain property has the meaning given by section 170(b)(1)(C)(iv) of the Internal Revenue Code, but does not include property to which an election under section 170(b)(1)(C)(iii) of the Internal Revenue Code applies.

(b) The amount of the deduction may not exceed 15 percent of alternative minimum taxable net income less the deduction allowed under subdivision 6.

Subd. 6. **Dividends received.** (a) A deduction is allowed from alternative minimum taxable net income equal to the deduction for dividends received under section 290.21, subdivision 4, for purposes of calculating taxable income under section 290.01, subdivision 29.

(b) The amount of the deduction must not exceed 90 percent of alternative minimum taxable net income. This limitation does not apply to dividends paid to or received from a corporation which is subject to tax under section 290.35 or 290.36 and which is a member of an affiliated group of corporations as defined by the Internal Revenue Code.

Subd. 7. **Foreign operating companies.** The income and deductions related to foreign operating companies, as defined in section 290.01, subdivision 6b, that are used to calculate Minnesota alternative minimum taxable income, are limited to the amounts included for purposes of calculating taxable income under section 290.01, subdivision 29.

Subd. 8. **Carryover credit.** (a) A corporation is allowed a credit against qualified regular tax for qualified alternative minimum tax previously paid. The credit is allowable only if the corporation has no tax liability under this section for the taxable year and if the corporation has an alternative minimum tax credit carryover from a previous year. The credit allowable in a taxable year equals the lesser of

(1) the excess of the qualified regular tax for the taxable year over the amount computed under subdivision 1, clause (1), for the taxable year or

(2) the carryover credit to the taxable year.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "Qualified alternative minimum tax" equals the amount determined under subdivision 1 for the taxable year.

(2) "Qualified regular tax" means the tax imposed under section 290.06, subdivision 1.

(c) The qualified alternative minimum tax for a taxable year is an alternative minimum tax credit carryover to each of the taxable years succeeding the taxable year. The entire amount of the credit must be carried to the earliest taxable year to which the 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 in which alternative minimum tax was paid.

(d) An acquiring corporation may carry over this credit from a transferor or distributor corporation in a corporate acquisition. The provisions of section 381 of the Internal Revenue Code apply in determining the amount of the carryover, if any.

**History:** 1Sp1989 c 1 art 10 s 22; 1990 c 604 art 2 s 8-11,16; 1991 c 291 art 6 s 46; art 7 s 14; 1992 c 511 art 6 s 19; art 7 s 17; 1993 c 375 art 8 s 12,14; 1994 c 587 art 1 s 19,24

## 290.0922 MINIMUM FEE; CORPORATIONS.

Subdivision 1. **Imposition.** (a) In addition to the tax imposed by this chapter without regard to this section, the franchise tax imposed on a corporation required to file under section 289A.08, subdivision 3, other than a corporation having a valid election in effect under section 1362 of the Internal Revenue Code for the taxable year includes a tax equal to the following amounts:

If the sum of the corporation's  
Minnesota property, payrolls, and sales  
or receipts is:

	the tax equals:
less than \$ 500,000	\$ 0
\$ 500,000 to \$ 999,999	\$ 100
\$ 1,000,000 to \$ 4,999,999	\$ 300
\$ 5,000,000 to \$ 9,999,999	\$1,000
\$10,000,000 to \$19,999,999	\$2,000
\$20,000,000 or more	\$5,000

(b) A tax is imposed annually beginning in 1990 on a corporation required to file a return under section 289A.12, subdivision 3, that has a valid election in effect for the taxable year under section 1362 of the Internal Revenue Code and on a partnership required to file a return under section 289A.12, subdivision 3, other than a partnership that derives over 80 percent of its income from farming. The tax imposed under this paragraph is due on or before the due date of the return for the taxpayer due under section 289A.18, subdivision 1. The commissioner shall prescribe the return to be used for payment of this tax. The tax under this paragraph is equal to the following amounts:

If the sum of the S corporation's or partnership's  
Minnesota property, payrolls, and sales  
or receipts is:

	the tax equals:
less than \$ 500,000	\$ 0
\$ 500,000 to \$ 999,999	\$ 100
\$ 1,000,000 to \$ 4,999,999	\$ 300
\$ 5,000,000 to \$ 9,999,999	\$1,000
\$10,000,000 to \$19,999,999	\$2,000
\$20,000,000 or more	\$5,000

**Subd. 2. Exemptions.** The following entities are exempt from the tax imposed by this section:

- (1) corporations exempt from tax under section 290.05 other than insurance companies exempt under subdivision 1, paragraph (d);
- (2) real estate investment trusts;
- (3) regulated investment companies or a fund thereof; and
- (4) entities having a valid election in effect under section 860D(b) of the Internal Revenue Code;
- (5) town and farmers' mutual insurance companies; and
- (6) cooperatives organized under chapter 308A that provide housing exclusively to persons age 55 and over and are classified as homesteads under section 273.124, subdivision 3.

Entities not specifically exempted by this subdivision are subject to tax under this section, notwithstanding section 290.05.

**Subd. 3. Definition.** "Minnesota sales or receipts," "Minnesota property," and "Minnesota payrolls" have the meanings given in section 290.092, subdivision 4.

**Subd. 4. Partner's pro rata share.** For the purposes of this section, a partner's pro rata share of a partnership's property, payroll, and sales or receipts is not included in the property, payroll, and sales or receipts of the partner.

**History:** 1990 c 604 art 2 s 12; 1991 c 291 art 6 s 31,46; art 7 s 15; 1992 c 511 art 6 s 14,19; art 7 s 18; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**NOTE:** For applicability of this section, see Laws 1990, chapter 604, article 2, section 22.

## **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 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.

**History:** 1987 c 268 art 1 s 55; 1988 c 719 art 3 s 12; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

## 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, 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, the deduction provided by this section shall not be allowed.

Subd. 1a. **Insurance companies.** Insurance companies may deduct for the taxable year the amount of any operations loss deduction as provided in section 810, or a net operating loss deduction as provided in sections 172 and 832(c)(10) of the Internal Revenue Code, subject to the limitations provided in this section.

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) or 810(a), in the case of life insurance companies, of the Internal Revenue Code, 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) or 810(b), in the case of life insurance companies, of the Internal Revenue Code 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 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 289A.08, subdivision 9, 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 289A.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 289A.40 and 289A.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 section 289A.40, 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.

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. [Repealed, 1988 c 719 art 2 s 57]

**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; 1989 c 28 s 15,25; 1Sp1989 c 1 art 10 s 23,24; 1990 c 480 art 1 s 46; 1990 c 604 art 2 s 16; 1991 c 199 art 2 s 1; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24*

#### **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 4, 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; 1992 c 464 art 2 s 3

**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, 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.

(c) In the case of an individual who is a resident for only part of a taxable year, the individual's income, gains, losses, and deductions from the distributive share of a partnership, S corporation, trust, or estate are not subject to allocation outside this state to the extent of the distributive share multiplied by a ratio, the numerator of which is the number of days the individual was a resident of this state during the tax year of the partnership, S corporation, trust, or estate, and the denominator of which is the number of days in the taxable year of the partnership, S corporation, trust, or estate.

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.

Severance pay shall be considered income from labor or personal or professional services.

(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, 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) 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 goodwill or income from a covenant not to compete that is connected with a business operating all or partially in Minnesota is allocated to this state to the extent that the income from the business in the year preceding the year of sale was assignable to Minnesota under subdivision 3.

(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, the Minnesota state lottery, and lawful gambling as defined in section 349.12, subdivision 24, 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 rule.** Notwithstanding subdivisions 3 and 4, all income from the operation of an athletic team when the visiting team does not share in the gate receipts 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.

**Subd. 7. [Repealed, 1991 c 291 art 7 s 26]**

**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; 1989 c 28 s 16,17,25; 1989 c 334 art 2 s 51; 1Sp1989 c 1 art 10 s 25,26; 1990 c 480 art 5 s 2,3; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 32,33,46; art 7 s 16; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 416 art 2 s 4; 1994 c 587 art 1 s 24

## 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 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.

(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 multi-state 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 chapter 270B, 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; 1989 c 184 art 2 s 18

**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 pur-

poses 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 of a corporation, partnership, or proprietorship 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 its 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:

(1) the sale not in the ordinary course of business of tangible or intangible assets used in conducting business activities must be disregarded; and

(2) property and payroll at a distribution center outside of Minnesota are disregarded if the sole activity at the distribution center is the filling of orders, and no solicitation of orders occurs at the distribution center.

**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;
- (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 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 purchased 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 that are unsecured by real or tangible personal property or secured by intangible 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 and syndication loans must be attributed under paragraphs (e) to (h). A participation loan is an arrangement in which a lender makes a loan to a borrower and then sells, assigns, or otherwise transfers all or a part of the loan to a purchasing financial institution. A syndication loan is a loan transaction involving multiple financial institutions in which all the lenders are named as parties to the loan documentation, are known to the borrower, and have privity of contract with the 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 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, excluding such receipts, earned from sources within this state bears to gross business income, excluding such receipts, 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.

(o) A financial institution's 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 in paragraph (n).

Subd. 7. [Repealed, 1991 c 291 art 7 s 26]

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 financial institution, 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 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 by real or tangible personal property or secured by intangible 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 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 participation and syndication loans 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 receivables 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 paragraph, 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 included in the property factor in the same manner as assets in the nature of securities or money market instruments are included under paragraph (1).

**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; 1989 c 27 art 2 s 6,7; 1989 c 28 s 25; 1Sp1989 c 1 art 10 s 27; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; art 7 s 17-19; 1992 c 363 art 1 s 11; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 13,14; 1994 c 587 art 1 s 24

## 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)(1) 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 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; and

(2)(i) The remaining 20 percent of dividends if the dividends received are the stock in an affiliated company transferred in an overall plan of reorganization and the dividend is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as amended through December 31, 1989; or

(ii) The remaining 20 percent of dividends if the dividends are received from a corporation which is subject to tax under section 290.35 or 290.36 and which is a member of an affiliated group of corporations as defined by the Internal Revenue Code and the dividend is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as amended through December 31, 1989, or is deducted under an election under section 243(b) of the Internal Revenue Code.

(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 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.

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.

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.

(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.

(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) the percentage allowed 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; 1989 c 28 s 25; 1Sp1989 c 1 art 10 s 28; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

## 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, 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, 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. 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.

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 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. [Repealed, 1990 c 480 art 5 s 15]

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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24*

**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 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; c 719 art 3 s 12; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

## **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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**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 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. [Repealed, 1990 c 480 art 1 s 45]

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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24*

**290.29** [Repealed, 1990 c 480 art 1 s 45]

### **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 289A.31, subdivision 3, 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; 1990 c 480 art 1 s 46

### **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, but is subject to the tax imposed under section 290.0922. 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 (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,

(e) dividends with respect to which there is provided a deduction under sections 241 to 247 of the Internal Revenue Code,

(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 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.

**Subd. 4. Partner's distributive share.** The provisions of sections 704, 706 to 741, and 743 to 761 of the Internal Revenue Code 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 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 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. 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; 1989 c 28 s 25; 1990 c 604 art 2 s 13,16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

## 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 19 to 19f, 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; 1989 c 28 s 18

## 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 net income.** The net income of insurance companies taxable under this chapter shall be computed as follows:

(a) Each life insurance company shall report to the commissioner the life insurance company taxable net income as defined in section 801(b) of the Internal Revenue Code, incorporating any elections made by the taxpayer in determining life insurance company taxable income for federal income tax purposes.

(b) Each insurance company other than a life insurance company shall report to the commissioner its federal taxable income as defined in section 832 of the Internal Revenue Code, or its taxable investment income as defined in section 832 of the Internal Revenue Code, incorporating any elections made by the taxpayer in accordance with the Internal Revenue Code in determining federal taxable income or taxable investment income for federal income tax purposes.

(c) The life insurance company taxable net income, federal taxable income, or taxable investment income so reported is subject to the modifications provided in section 290.01, subdivisions 19c to 19f.

**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 computed under sections 290.06, subdivision 1, and 290.0921, 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 plan corporation.** For purposes of this section, the taxable income of a nonprofit health service plan corporation must be determined as provided under section 833 of the Internal Revenue Code and section 290.01, subdivisions 19c to 19f.

Subd. 5. **Definition of insurance company.** For purposes of this section, the terms "insurance company," "life insurance company," and "insurance company other than life" have the meanings given in the Internal Revenue Code.

Subd. 6. **Guaranty association assessment offset.** An insurance company may offset against its corporate franchise tax liability under this chapter any amount paid pursuant to assessments made for insolvencies which occur after July 31, 1994, under sections 60C.01 to 60C.22, and any amount paid pursuant to assessments made after July 31, 1994, under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or sections 61B.18 to 61B.32, as follows:

(a) Each such assessment shall give rise to an amount of offset equal to 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid.

(b) The amount of offset initially determined for each taxable year is the sum of the amounts determined under paragraph (a) for that taxable year.

(c) Each year the commissioner of revenue shall compare total guaranty association assessments levied over the preceding five calendar years to the sum of all premium tax and corporate franchise tax revenues collected from insurance companies without reduction for any guaranty association assessment offset, in the preceding calendar year, referred to in this subdivision as "preceding year insurance tax revenues." If total guaranty association assessments levied over the preceding five years exceed the preceding year insurance tax revenues, insurance companies shall be allowed only a proportionate part of the corporate franchise tax offset calculated under paragraph (b) for the current calendar year. The proportionate part of the corporate franchise tax offset allowed in the current calendar year is determined by multiplying the amount calculated under paragraph (b) by a fraction, the numerator of which equals the preceding year insurance tax revenues and the denominator of which equals total guaranty association assessments levied over the preceding five-year period. The proportionate part of the premium tax offset that is not allowed shall be carried forward to subsequent tax years and added to the amount of corporate franchise tax offset calculated under paragraph (b) before application of the limitation imposed by this paragraph. Any amount carried forward from prior years must be allowed before allowance of the offset for the current year calculated under paragraph (b). The corporate franchise tax offset limitation must be calculated separately for (1) insurance companies subject to assessment under sections 60C.01 to 60C.22, and (2) insurance companies subject to assessment under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or sections 61B.18 to 61B.32. When the corporate franchise tax offset is limited by this provision, the commissioner of revenue will notify affected insurance companies on a timely basis for purposes of completing premium and corporate franchise tax returns. The guaranty associations created under sections 60C.01 to 60C.22, Minnesota Statutes 1992, sections 61B.01 to 61B.16, and sections 61B.18 to 61B.32, shall provide the commissioner of revenue with the necessary information on guaranty association assessments. The limitation in this paragraph is effective for offsets allowable in 1999 and thereafter.

(d) If the offset determined by the application of paragraphs (a) to (c) exceeds the greater of the insurance company's corporate franchise tax liability under this chapter prior to allowance of the credit provided by subdivision 3 or its premium tax liability under chapter 60A, then the insurance company may carry forward the excess, referred to in this subdivision as the "carryforward credit," to subsequent taxable years. The car-

ryforward credit must be allowed as an offset against corporate franchise tax liability for the first succeeding year to the extent that the corporate franchise tax liability for that year exceeds the amount of the allowable offset for the year determined under paragraphs (a) to (c). The carryforward credit shall be reduced, but not below zero, by the greater of the amount of the carryforward credit allowed as an offset against the corporate franchise tax pursuant to this paragraph or the amount of the carryforward credit allowed as an offset against the insurance company's premium tax liability under chapter 60A pursuant to section 60A.15, subdivision 15, paragraph (d). The remainder, if any, of the carryforward credit must be carried forward to succeeding taxable years until the entire carryforward credit has been credited against the insurance company's liability for corporate franchise tax under this chapter and premium tax under chapter 60A.

(e) A refund paid by the Minnesota life and health insurance guaranty association to member insurers under Minnesota Statutes 1992, section 61B.07, subdivision 6, or section 61B.24, subdivision 6, with respect to an assessment payment which has been offset against taxes shall reduce the carryforward credit determined under paragraph (d) and, if the refund exceeds the amount of the carryforward credit, shall be repaid by the insurers to the extent of the offset to the state in the manner the commissioner of revenue requires.

**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; 1Sp1989 c 1 art 10 s 29-31; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; art 7 s 20; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 20,24

**NOTE:** Subdivision 6, as added by Laws 1994, chapter 587, article 1, section 20, is effective to be used as an offset against tax liabilities payable after June 30, 1995. If a guaranty association assessment was made before August 1, 1994, under Minnesota Statutes 1992, sections 61B.01 to 61B.16 and is revoked or invalidated, a subsequent assessment to pay the same liabilities shall not be eligible for the offset as provided for under Minnesota Statutes, section 290.35, subdivision 6, and shall not be used in any calculation to determine the offset limitation under Minnesota Statutes, section 290.35, subdivision 6, paragraph (c). See Laws 1994, chapter 587, article 1, section 27.

## **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, 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**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** [Repealed, 1990 c 480 art 1 s 45]

### **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, except corporations specifically exempted under subdivision 2, 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. 2. 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 has been filed under section 289A.08;

(3) the corporation is exempt from taxation under this chapter pursuant to section 290.05;

(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); or

(5) the corporation has a valid election in effect under section 1362 of the Internal Revenue Code.

**Subd. 3. Annual filing.** Every corporation not exempt under subdivision 2 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. 4. 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, except for issues related to its Minnesota tax liability, 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 must 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) Pursuant to section 270B.14, subdivision 6, 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.

Subd. 5. [Renumbered subd 4]

**History:** 1987 c 268 art 1 s 92; 1988 c 719 art 2 s 41-44; 1989 c 27 art 2 s 8; 1989 c 184 art 2 s 19; 1990 c 480 art 1 s 46; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 416 art 2 s 5; 1994 c 587 art 1 s 24

**290.38** [Repealed, 1990 c 480 art 1 s 45]

**290.39** [Repealed, 1990 c 480 art 1 s 45]

**NOTE:** The amendments to section 290.39 in Laws 1990, chapter 480, article 5, sections 4 and 5 are recodified in section 289A.08, subdivisions 7 and 14

**290.391** [Repealed, 1990 c 480 art 1 s 45]

**290.40** [Repealed, 1990 c 480 art 1 s 45]

**290.41** [Repealed, 1990 c 480 art 1 s 45]

**290.42** [Repealed, 1990 c 480 art 1 s 45]

**290.43** [Repealed, 1990 c 480 art 1 s 45]

## **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; 1988 c 690 art 1 s 1; 1989 c 335 art 1 s 269

## **290.432 CORPORATE NONGAME WILDLIFE CHECKOFF.**

A corporation that files an income tax return may designate on its 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 corporation and paid into the nongame wildlife management account established by section 290.431 for use by the section of wildlife in the department of natural resources for its nongame wildlife program. The commissioner of revenue shall, on the corporate tax return, notify filers of their right to designate that a portion of their tax return be paid into the nongame wildlife management account for the protection of endangered 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 to the legislative commission on Minnesota resources in the form determined by the commission. None of the money provided in this section may be spent unless the commission has approved the work program.

The state pledges and agrees with all corporate contributors to the nongame wildlife account to use the funds contributed solely for the nongame wildlife program 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 those programs.

**History:** 1989 c 335 art 1 s 189

**290.44** [Repealed, 1990 c 480 art 1 s 45]

**290.45** [Repealed, 1990 c 480 art 1 s 45]

**290.46** [Repealed, 1990 c 480 art 1 s 45]

**290.47** [Repealed, 1990 c 480 art 1 s 45]

#### **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. [Repealed, 1991 c 291 art 16 s 12]

Subd. 6. [Repealed, 1983 c 15 s 33]

Subd. 7. [Repealed, 1992 c 511 art 7 s 26]

Subd. 8. [Repealed, 1991 c 291 art 16 s 12]

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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**290.49** [Repealed, 1990 c 480 art 1 s 45]

#### **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. 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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**290.50** [Repealed, 1990 c 480 art 1 s 45]

**290.501** [Repealed, 1983 c 342 art 1 s 44]

**290.51** [Repealed, 1982 c 523 art 2 s 49]

**290.52** [Repealed, 1990 c 480 art 2 s 18]

**290.521** [Repealed, 1990 c 480 art 1 s 45]

**290.522** [Repealed, 1990 c 480 art 1 s 45]

**290.523** [Repealed, 1990 c 480 art 1 s 45]

**290.53** Subdivision 1. [Repealed, 1990 c 480 art 1 s 45 ]

Subd. 1a. [Repealed, 1990 c 480 art 1 s 45]

Subd. 2. [Repealed, 1990 c 480 art 1 s 45]

Subd. 2a. [Repealed, 1990 c 480 art 1 s 45]

Subd. 3. [Renumbered subd 3a]

Subd. 3. [Repealed, 1990 c 480 art 1 s 45]

Subd. 3a. [Renumbered subd 3]

Subd. 3a. [Repealed, 1990 c 480 art 1 s 45]

Subd. 4. [Repealed, 1990 c 480 art 1 s 45]

Subd. 5. [Repealed, 1990 c 480 art 2 s 18]

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

Subd. 7. [Repealed, 1990 c 480 art 1 s 45]

Subd. 8. [Repealed, 1990 c 480 art 1 s 45]

Subd. 9. [Repealed, 1990 c 480 art 1 s 45]

Subd. 10. [Repealed, 1990 c 480 art 1 s 45]

Subd. 11. [Repealed, 1990 c 480 art 1 s 45]

**290.531** [Repealed, 1987 c 268 art 14 s 25]

**290.54** [Repealed, 1990 c 480 art 1 s 45]

**290.56** [Repealed, 1990 c 480 art 1 s 45]

**290.57** [Repealed, 1990 c 480 art 1 s 45]

**290.58** [Repealed, 1990 c 480 art 1 s 45]

**290.59** [Repealed, 1990 c 480 art 1 s 45]

**290.60** [Repealed, 1981 c 178 s 119]

**290.61** [Repealed, 1989 c 184 art 1 s 20]

## **290.611 DISCLOSURE OF CONTENTS OF TAX RETURNS PROHIBITED IN CERTAIN INSTANCES; PENALTY.**

Subdivision 1. No person who prepares, aids in the preparation, processes, transmits, 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. [Repealed, 1990 c 480 art 1 s 45]

**History:** 1971 c 788 s 1,2; 1973 c 66 s 1; 1973 c 582 s 3; 1986 c 444; 1991 c 291 art 21 s 13

**290.612** [Repealed, 1990 c 480 art 10 s 12]

**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** [Repealed, 1990 c 480 art 1 s 45]

**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 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; 1989 c 184 art 2 s 22*

### **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, except wages shall not include agricultural labor as defined in section 3121(g) of the Internal Revenue Code.

(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, semianual, 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, limited liability companies, 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 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 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 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 commissioner 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. 4b. Withholding by partnerships. (a)** A partnership shall deduct and withhold a tax as provided in paragraph (b) for nonresident individual partners based on their distributive shares of partnership income for a taxable year of the partnership.

**(b)** The amount of tax withheld is determined by multiplying the partner's distributive share allocable to Minnesota under section 290.17, paid or credited during the taxable year by the highest rate used to determine the income tax liability for an individual under section 290.06, subdivision 2c, except that the amount of tax withheld may be determined by the commissioner if the partner submits a withholding exemption certificate under subdivision 5.

**(c)** The commissioner may reduce or abate the tax withheld under this subdivision if the partnership had reasonable cause to believe that no tax was due under this section.

(d) Notwithstanding paragraph (a), a partnership is not required to deduct and withhold tax for a nonresident partner if:

(1) the partner elects to have the tax due paid as part of the partnership's composite return under section 289A.08, subdivision 7;

(2) the partner has Minnesota assignable federal adjusted gross income from the partnership of less than \$1,000; or

(3) the partnership is liquidated or terminated, the income was generated by a transaction related to the termination or liquidation, and no cash or other property was distributed in the current or prior taxable year; or

(4) the distributive shares of partnership income are attributable to:

(i) income required to be recognized because of discharge of indebtedness;

(ii) income recognized because of a sale, exchange, or other disposition of real estate, depreciable property, or property described in section 179 of the Internal Revenue Code; or

(iii) income recognized on the sale, exchange, or other disposition of any property that has been the subject of a basis reduction pursuant to section 108, 734, 743, 754, or 1017 of the Internal Revenue Code

to the extent that the income does not include cash received or receivable or, if there is cash received or receivable, to the extent that the cash is required to be used to pay indebtedness by the partnership or a secured debt on partnership property.

(e) For purposes of subdivision 6a, and sections 289A.09, subdivision 2, 289A.20, subdivision 2, paragraph (c), 289A.50, 289A.56, 289A.60, and 289A.63, a partnership is considered an employer.

(f) To the extent that income is exempt from withholding under paragraph (d), clause (4), the commissioner has a lien in an amount up to the amount that would be required to be withheld with respect to the income of the partner attributable to the partnership interest, but for the application of paragraph (d), clause (4). The lien arises under section 270.69 from the date of assessment of the tax against the partner, and attaches to that partner's share of the profits and any other money due or to become due to that partner in respect of the partnership. Notice of the lien may be sent by mail to the partnership, without the necessity for recording the lien. The notice has the force and effect of a levy under section 270.70, and is enforceable against the partnership in the manner provided by that section. Upon payment in full of the liability subsequent to the notice of lien, the partnership must be notified that the lien has been satisfied.

**Subd. 4c. Withholding by S corporations.** (a) A corporation having a valid election in effect under section 290.9725 shall deduct and withhold a tax as provided in paragraph (b) for nonresident individual shareholders their share of the corporation's income for the taxable year.

(b) The amount of tax withheld is determined by multiplying the amount of income allocable to Minnesota under section 290.17 by the highest rate used to determine the income tax liability of an individual under section 290.06, subdivision 2c, except that the amount of tax withheld may be determined by the commissioner if the shareholder submits a withholding exemption certificate under subdivision 5.

(c) Notwithstanding paragraph (a), a corporation is not required to deduct and withhold tax for a nonresident shareholder, if:

(1) the shareholder elects to have the tax due paid as part of the corporation's composite return under section 289A.08, subdivision 7;

(2) the shareholder has Minnesota assignable federal adjusted gross income from the corporation of less than \$1,000; or

(3) the corporation is liquidated or terminated, the income was generated by a transaction related to the termination or liquidation, and no cash or other property was distributed in the current or prior taxable year.

(d) For purposes of subdivision 6a, and sections 289A.09, subdivision 2, 289A.20, subdivision 2, paragraph (c), 289A.50, 289A.56, 289A.60, and 289A.63, a corporation is considered an employer.

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

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

(2) Copies of exemption certificates 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. Pursuant to section 270B.06, 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, pursuant to section 270B.06, 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. [Repealed, 1990 c 480 art 1 s 45]

Subd. 6a. **Failure to comply with withholding provisions.** (a) When a 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 the tax, or fails to make deposits or payments of the tax and is notified of the failure by notice served upon the person in the manner prescribed for service of a summons in civil actions, then the requirements of paragraph (b) shall be met. In the case of a corporation, partnership or trust, notice served upon an officer, partner or trustee shall, for purposes of this subdivision, be considered notice served upon the corporation, partnership, or trust and their officers, partners, or trustees.

(b) A person who is required to deduct, withhold, pay over, or deposit a tax imposed by this chapter, if notice has been served upon that person in accordance with paragraph (a), shall after that date deduct, withhold, and collect the 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 the taxes in a separate account in a bank, savings bank or savings and loan association and shall keep the amount of the taxes in that account until paid to the state of Minnesota. The account constitutes and must be designated as a special fund in trust for the state of Minnesota payable to the state of Minnesota by that person as trustee. The person upon whom notice is served shall notify the commissioner of revenue in writing of the name and address of the bank, savings bank or savings and loan association wherein the account is kept, together with other information the commissioner may require. In lieu of the trust fund account, the commissioner may, when necessary 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 of it, security in a form and in an amount the commissioner determines, not more than 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) that the requirements of law and rules with respect to the taxes imposed by this chapter have been and will be complied with, may cancel the notification. The cancellation shall take effect at the time specified in the notice of the cancellation. All notices authorized or required under this subdivision must be in the form the commissioner determines.

Subd. 6b. **Jeopardy assessments.** The commissioner, on having reason to believe that the collection of the tax under this section, section 290.923, or chapter 289A will be jeopardized by delay, may immediately assess the tax, whether or not the time prescribed by law for making and filing the return and paying the tax has expired.

Subd. 7. [Repealed, 1990 c 480 art 1 s 45]

Subd. 8. [Repealed, 1990 c 480 art 1 s 45]

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. [Repealed, 1990 c 480 art 1 s 45]

Subd. 12. **Withheld amount, credit against tax.** (a) The amount deducted and withheld as tax under subdivision 2a or 3 during a calendar year upon wages shall be allowed as a credit to the recipient of the income against the taxes imposed by this chapter, 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.

(b) The amount deducted and withheld under subdivisions 4b and 4c and under section 290.923, subdivision 2, for partnership, S corporation, or royalty income must be allowed as a credit to the recipient of the income against the taxes imposed by this chapter for the tax year the income is subject to tax under this chapter.

Subd. 13. [Repealed, 1990 c 480 art 1 s 45]

Subd. 14. [Repealed, 1990 c 480 art 1 s 45]

Subd. 15. [Repealed, 1990 c 480 art 1 s 45]

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. Pursuant to section 270B.12, subdivision 1, 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. [Repealed, 1990 c 480 art 1 s 45]

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.

(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. Notice to reemployment insurance claimants.** At the time an individual makes a claim for reemployment insurance benefits, the commissioner of economic security must notify the individual that the individual's reemployment insurance may be subject to state income taxes depending on the individual's other income.

**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, or if a lien has been filed under section 270.69, within the statutory period for enforcement of the lien, 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 571.72. 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 571.75. 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 571.922. The employer shall continue to withhold each pay period until the notice is released by the commissioner under section 270.709. 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 571.921. 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.

(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 571.927, subdivision 2.

(3) Within ten days after the expiration of such pay period, the employer shall remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during each pay period 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. 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), 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 subdivision 6. An application for an account number must be made upon a form prescribed by the commissioner. It must give 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 other information the commissioner may require. The application must 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 is 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.

**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 the amount of the payment multiplied by the highest rate used in determining the income tax liability of an individual under section 290.06, subdivision 2c.

(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 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, 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. Pari-mutuel winnings.** Any holder of a class A, B, or D license issued by the Minnesota racing commission shall deduct and withhold an amount equal to the winnings multiplied by the highest rate used in determining the income tax liability of an individual under section 290.06, subdivision 2c, 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. 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.

**Subd. 29. Lottery prizes.** Eight percent of the payment of Minnesota state lottery winnings which are subject to withholding must be withheld 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. 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 state lottery with a statement, made under the penalties of perjury, containing the name, address, and social security account number of the person receiving the payment. The Minnesota state lottery is liable for the payment of the tax required to be withheld under this subdivision but is not liable to any person for the amount of the payment.

**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; 1989 c 28 s 19,20,25; 1989 c 184 art 2 s 23-25; 1Sp1989 c 1 art 10 s 34-36; 1990 c 480 art 1 s 29-32; art 2 s 16; art 5 s 7,8; 1990 c 516 s 9; 1990 c 604 art 2 s 16; 1991 c 199 art 2 s 1; 1991 c 233 s 109; 1991 c 291 art 6 s 34-39,46; art 16 s 11; 1992 c 511 art 6 s 19; 1993 c 137 s 9; 1993 c 375 art 8 s 14; 1994 c 483 s 1; 1994 c 488 s 8; 1994 c 587 art 1 s 24*

## **290.9201 TAX ON NONRESIDENT ENTERTAINERS.**

**Subdivision 1. Definitions.** (a) "Entertainer" means an individual who is not a resident of Minnesota or a state with which Minnesota has a reciprocal agreement under section 290.081 who performs acts in Minnesota that amuse, entertain, or inform. For purposes of this section, "entertainer" includes, but is not limited to, a musician, singer, dancer, comedian, thespian, athlete, and public speaker.

(b) Entertainment entity means either: (1) an entertainer who is paid compensation for providing entertainment as an independent contractor, (2) a partnership that is paid compensation for entertainment provided by entertainers who are partners, or (3) a corporation that is paid compensation for entertainment provided by entertainers who are shareholders of the corporation.

**Subd. 2. Tax on entertainment.** Entertainment entities are subject to a tax in the amount of two percent of the total compensation received by them during the calendar year for entertainment performed in Minnesota.

**Subd. 3. Credit against tax.** Each calendar year an entertainment entity may take a nonrefundable credit of \$100 against the tax imposed by this section.

**Subd. 4. [Repealed, 1990 c 480 art 1 s 45]**

**Subd. 5. [Repealed, 1990 c 480 art 1 s 45]**

**Subd. 6. Exemption from income tax.** Compensation subject to the tax imposed under this section is not assignable to Minnesota under section 290.17.

**Subd. 7. Withholding on compensation of entertainers.** The tax on compensation of an entertainer must be withheld at a rate of two percent of all compensation paid to the entertainment entity by the person or corporation having legal control of the payment of the compensation. The compensation subject to withholding under this section is not subject to the withholding provisions of section 290.92, subdivision 2a, 3, or 28, except the provisions of sections 290.92, subdivision 6a, 270.06, paragraph (16), 289A.09, subdivisions 1, paragraph (f), and 2, 289A.60, and 289A.63 shall apply to withholding under this section as if the withholding were upon wages.

**Subd. 8. Deposit of entertainer withholding.** The person or corporation having legal control of the payment of compensation taxable under this section shall deposit the earnings tax with the commissioner.

**Subd. 9. [Repealed, 1990 c 480 art 1 s 45]**

**Subd. 10. [Repealed, 1990 c 480 art 1 s 45]**

**Subd. 11. Exception from withholding for public speakers.** The provisions of subdivisions 7 and 8 shall not be effective for compensation paid to nonresident public

speakers, if the compensation paid to the speaker is less than \$2,000 or is only a payment of the speaker's expenses.

**History:** 1989 c 28 s 21; 1990 c 480 art 1 s 33,34; 1990 c 604 art 2 s 14; 1992 c 511 art 6 s 15; 1993 c 13 art 2 s 8

**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 sections 289A.09 and 289A.20, subdivision 2.

**Subd. 4. Withholding statement.** Every person required to deduct and withhold tax under this section shall furnish withholding statements as required by section 289A.09, subdivision 2.

**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.** [Repealed, 1990 c 480 art 1 s 45]

**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.

**Subd. 11. Exemption from deduction and withholding.** A person or entity whose shares or certificates of beneficial interest are traded on the New York Stock Exchange



or publicly traded on any recognized stock exchange and which issues 1099 or K1 forms to its shareholders or certificate holders and provides the 1099 or K1 information to the department of revenue, is exempt from deduction and withholding under this section.

**History:** 1987 c 268 art 9 s 21; 1990 c 480 art 1 s 46; 1992 c 511 art 6 s 16

**290.93** [Repealed, 1990 c 480 art 1 s 45]

**290.931** [Repealed, 1990 c 480 art 1 s 45]

**290.932** [Repealed, 1990 c 480 art 1 s 45]

**290.933** [Repealed, 1990 c 480 art 1 s 45]

**290.934** [Repealed, 1990 c 480 art 1 s 45]

**290.935** [Repealed, 1990 c 480 art 1 s 45]

**290.936** [Repealed, 1990 c 480 art 1 s 45]

**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

## **290.9705 SURETY DEPOSITS REQUIRED FOR CONSTRUCTION CONTRACTS.**

**Subdivision 1. Withholding of payments to out-of-state contractors.** (a) In this section, "person" means a person, corporation, or cooperative, the state of Minnesota and its political subdivisions, and a city, county, and school district in Minnesota.

(b) A person who in the regular course of business is hiring, contracting, or having a contract with a nonresident person or foreign corporation, as defined in Minnesota Statutes 1986, section 290.01, subdivision 5, to perform construction work in Minnesota, shall deduct and withhold eight percent of every payment to the contractor if the contract exceeds or can reasonably be expected to exceed \$100,000.

**Subd. 2.** [Repealed, 1990 c 480 art 1 s 45]

**Subd. 3. Waiver of withholding.** The conditions in subdivisions 1 and 2 may be waived by the commissioner if (1) the contractor gives the commissioner a cash surety or a bond, secured by an insurance company licensed by Minnesota, conditioned that the contractor will comply with all applicable provisions of this chapter and chapter 297A, or (2) the contractor has done construction work in Minnesota at any time during the three calendar years prior to entering the contract and has fully complied with all the provisions of this chapter and chapter 297A for the three prior years.

**Subd. 4. Deposits used as surety for compliance with income and sales tax provisions.** The amounts deposited with the commissioner under subdivision 1 are considered a surety to guarantee payment of income, franchise, withholding, and sales and

use taxes of the contractor. The commissioner shall retain the money deposited until the commissioner determines the contractor's liability for state income, franchise, sales and use taxes, and taxes withheld under section 290.92.

**History:** 1989 c 28 s 22; 1990 c 480 art 1 s 35

**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. An S corporation shall not be subject to the taxes imposed by this chapter, except the taxes imposed under sections 290.0922, 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; 1989 c 28 s 25; 1990 c 604 art 2 s 15,16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**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 after December 31, 1986, and having a recognized built-in gain as defined in section 1374 of the Internal Revenue Code, 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 subdivision 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. 1a. Asset transfers.** In the case of the transfer of assets from a C corporation to an S corporation as described in section 1374(d)(8) of the Internal Revenue Code, a tax is imposed on the taxable income of the S corporation, as defined in this section, at the rate prescribed in section 290.06, subdivision 1.

**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, subject to the modifications provided in section 290.01, subdivision 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, 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.

**Subd. 5. Credit carryforward.** Any credit carryforward allowed under this chapter and arising in a taxable year in which the corporation was a C corporation is allowed as a credit against the tax imposed by this section.

**History:** 1988 c 719 art 2 s 47; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; art 7 s 21-24; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**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. 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, 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

## 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.

**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, 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, 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.

**History:** 1988 c 719 art 2 s 49; art 3 s 12; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**290.973** [Repealed, 1982 c 523 art 1 s 72]

**290.974** [Repealed, 1990 c 480 art 1 s 45]

## 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 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

**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. 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; 1989 c 28 s 25; 1990 c 604 art 2 s 16; 1991 c 291 art 6 s 46; 1992 c 511 art 6 s 19; 1993 c 375 art 8 s 14; 1994 c 587 art 1 s 24

- 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]