

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 3441**

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DATE	D-PG	OFFICIAL STATUS
04/04/2016		Introduction and first reading Referred to Taxes

A bill for an act

1.1 relating to taxation; eliminating income and business taxes and replacing the  
1.2 sales tax with a fair tax; amending Minnesota Statutes 2014, sections 297A.61,  
1.3 subdivisions 2, 7, 24; 297A.62, subdivisions 1, 1a; 297A.63, by adding a  
1.4 subdivision; 297A.66, subdivision 3; proposing coding for new law in Minnesota  
1.5 Statutes, chapter 297A; repealing Minnesota Statutes 2014, sections 290.01,  
1.6 subdivisions 1, 1a, 2, 3, 3a, 3b, 4, 4a, 4c, 5, 5a, 5b, 6, 7, 7a, 7b, 8, 8a, 9, 10, 11,  
1.7 12, 13, 14, 15, 16, 17, 18, 19a, 19b, 19c, 19d, 19f, 19h, 20, 22, 29, 29a, 30;  
1.8 290.014; 290.015; 290.02; 290.03; 290.032, subdivisions 1, 2, 3; 290.04; 290.05,  
1.9 subdivisions 1, 2, 3, 4, 8; 290.06, subdivisions 1, 2c, 2d, 22, 23, 27, 28, 29, 33,  
1.10 35, 36; 290.067, subdivisions 1, 2, 2a, 2b, 3, 4; 290.0671, subdivisions 1a, 2, 4,  
1.11 5, 6, 7; 290.0672; 290.0674, subdivisions 1, 2, 4, 5; 290.0675, subdivisions 1, 2,  
1.12 3, 4; 290.0677; 290.0679; 290.068, subdivisions 1, 2, 3, 4, 5, 6a, 7; 290.0681;  
1.13 290.0692; 290.07, subdivisions 1, 2, 4, 7; 290.0802; 290.081; 290.091; 290.0921,  
1.14 subdivisions 1, 2, 3, 3a, 4, 6, 8; 290.0922; 290.093; 290.095, subdivisions 1, 2,  
1.15 3, 4, 5, 9, 11; 290.10; 290.17, subdivisions 1, 2, 3, 4, 5, 6; 290.172; 290.191,  
1.16 subdivisions 1, 2, 3, 5, 6, 8, 9, 10, 11, 12; 290.20; 290.21, subdivisions 1,  
1.17 4; 290.22; 290.26, subdivision 6; 290.281, subdivision 1; 290.30; 290.31,  
1.18 subdivisions 1, 27; 290.311, subdivision 1; 290.32; 290.34, subdivisions 1, 2;  
1.19 290.36; 290.371, subdivisions 1, 2, 3, 4; 290.431; 290.432; 290.48, subdivision  
1.20 10; 290.491; 290.62; 290.92, subdivisions 1, 2a, 3, 4, 4a, 4b, 4c, 5, 5a, 9, 10, 12,  
1.21 16, 17, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30; 290.9201, subdivisions 1, 2, 6, 7, 8,  
1.22 11; 290.923, subdivisions 1, 2, 3, 4, 5, 6, 8, 9, 10, 11; 290.9705, subdivisions 1,  
1.23 3, 4; 290.9725; 290.9726, subdivisions 1, 2, 4; 290.9727; 290.9728; 290.9729;  
1.24 290.9741; 290.9742; 290.9743; 290.9744; 297A.61, subdivisions 3, 4, 10, 12,  
1.25 13, 16a, 16b, 16c, 17, 17a, 17b, 18, 25, 26, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40,  
1.26 41, 42, 44, 45, 46, 49; 297A.62, subdivision 3; 297A.63, subdivision 2; 297A.64,  
1.27 subdivisions 1, 2, 3, 4, 5; 297A.65; 297A.67, subdivisions 2, 3, 4, 5, 6, 7, 7a, 8,  
1.28 9, 10, 11, 12, 13a, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 31, 32;  
1.29 297A.68, subdivisions 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22,  
1.30 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35a, 36, 37, 39, 40, 42, 43, 44; 297A.69,  
1.31 subdivisions 1, 2, 3, 4, 6, 7; 297A.70, subdivisions 1, 3, 4, 5, 6, 7, 8, 9, 9a, 10,  
1.32 11, 12, 13, 14, 15, 16, 17, 18, 19; 297A.71, subdivisions 1, 3, 6, 8, 11, 12, 13,  
1.33 14, 22, 23, 34, 35, 40, 42, 43, 44, 45, 46, 47, 48; 297A.75; 297D.01; 297D.02;  
1.34 297D.03; 297D.04; 297D.05; 297D.06; 297D.07; 297D.08; 297D.085; 297D.09;  
1.35 297D.10; 297D.11; 297D.12; 297D.13; 297F.01; 297F.02; 297F.03; 297F.031;  
1.36 297F.04; 297F.05; 297F.06; 297F.07; 297F.08, subdivisions 1, 2, 3, 4, 5, 6, 7,  
1.37 8, 8a, 9, 10, 12, 13; 297F.09, subdivisions 1, 2, 3, 4, 4a, 5, 7, 8, 9, 10; 297F.10;  
1.38 297F.11; 297F.12; 297F.13; 297F.14; 297F.15, subdivisions 9, 10; 297F.17;  
1.39

2.1 297F.18; 297F.185; 297F.19, subdivisions 1, 2, 3, 5, 6, 7, 8, 9; 297F.20; 297F.21,  
 2.2 subdivisions 1, 2, 3; 297F.23; 297F.24; 297F.25; 297G.01; 297G.02; 297G.03;  
 2.3 297G.031; 297G.032; 297G.04; 297G.05; 297G.06; 297G.07; 297G.08;  
 2.4 297G.09, subdivisions 1, 2, 3, 4, 6, 7, 8, 9, 10; 297G.10; 297G.11; 297G.12;  
 2.5 297G.13; 297G.14, subdivision 9; 297G.16; 297G.17; 297G.18, subdivisions 1,  
 2.6 2, 3, 5, 6, 7, 8, 9, 10, 11; 297G.19; 297G.20, subdivisions 1, 2, 3, 4; 297G.22;  
 2.7 297H.01; 297H.02; 297H.03; 297H.04; 297H.05; 297H.06; 297H.07; 297H.08;  
 2.8 297H.09; 297H.10, subdivision 1; 297H.11; 297H.115; 297H.12; 297H.13,  
 2.9 subdivisions 1, 2, 5; 297I.01; 297I.05, subdivisions 1, 2, 3, 4, 5, 7, 11, 12,  
 2.10 13, 14; 297I.06; 297I.10, subdivisions 1, 3, 4; 297I.11; 297I.15; 297I.20;  
 2.11 297I.25; 297I.30, subdivisions 1, 2, 7, 8, 9, 10; 297I.35; 297I.40; 297I.60;  
 2.12 297I.65; 297I.70; 297I.75; 297I.80; 297I.85; 297I.90; Minnesota Statutes 2015  
 2.13 Supplement, sections 290.01, subdivisions 19, 31; 290.0671, subdivisions 1, 6a;  
 2.14 297A.67, subdivision 13; 297A.68, subdivisions 2, 5; 297A.70, subdivision 2.

2.15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

2.16 Section 1. Minnesota Statutes 2014, section 297A.61, subdivision 2, is amended to read:

2.17 Subd. 2. **Person.** (a) "Person" means any natural person, and includes any  
 2.18 individual or group and any combination of individuals, groups, or individuals and  
 2.19 groups acting as a unit.

2.20 (b) Person also includes, unless the context clearly does not allow it, a firm,  
 2.21 partnership, joint venture, limited liability company, association, cooperative, social club,  
 2.22 fraternal organization, municipal or private corporation whether or not organized for  
 2.23 profit, estate, trust, business trust, receiver, trustee, syndicate, the United States, and a  
 2.24 state and its political subdivisions.

2.25 (c) Person includes, but is not limited to, directors and officers of corporations,  
 2.26 governors and managers of a limited liability company, or members of partnerships who,  
 2.27 either individually or jointly with others, have the control, supervision, or responsibility of  
 2.28 filing returns and making payment of the amount of tax imposed by this chapter.

2.29 (d) Person includes any agent or consignee of any individual or organization listed  
 2.30 in this subdivision.

2.31 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 2.32 or after January 1, 2018.

2.33 Sec. 2. Minnesota Statutes 2014, section 297A.61, subdivision 7, is amended to read:

2.34 Subd. 7. **Sales price.** (a) "Sales price" means the measure subject to sales tax, and  
 2.35 means the total amount of consideration, including cash, credit, personal property, and  
 2.36 services, for which personal property or services are sold, leased, or rented, valued in  
 2.37 money, whether received in money or otherwise, without any deduction for the following:

2.38 (1) the seller's cost of the property sold;

3.1 (2) the cost of materials used, labor or service cost, interest, losses, all costs of  
3.2 transportation to the seller, all taxes imposed on the seller, and any other expenses of  
3.3 the seller;

3.4 (3) charges by the seller for any services necessary to complete the sale, other than  
3.5 delivery and installation charges;

3.6 (4) delivery charges, except the percentage of the delivery charge allocated to  
3.7 delivery of tax exempt property, when the delivery charge is allocated by using either (i) a  
3.8 percentage based on the total sales price of the taxable property compared to the total sales  
3.9 price of all property in the shipment, or (ii) a percentage based on the total weight of the  
3.10 taxable property compared to the total weight of all property in the shipment; and

3.11 (5) installation charges.

3.12 (b) Sales price does not include:

3.13 (1) discounts, including cash, terms, or coupons, that are not reimbursed by a third  
3.14 party and that are allowed by the seller and taken by a purchaser on a sale; and

3.15 ~~(2) interest, financing, and carrying charges from credit extended on the sale of~~  
3.16 ~~personal property or services, if the amount is separately stated on the invoice, bill of sale,~~  
3.17 ~~or similar document given to the purchaser; and~~

3.18 ~~(3)~~ (2) any taxes legally imposed directly on the consumer that are separately stated  
3.19 on the invoice, bill of sale, or similar document given to the purchaser.

3.20 (c) Sales price includes consideration received by the seller from third parties if:

3.21 (1) the seller actually receives consideration from a party other than the purchaser  
3.22 and the consideration is directly related to a price reduction or discount on the sale;

3.23 (2) the seller has an obligation to pass the price reduction or discount through to  
3.24 the purchaser;

3.25 (3) the amount of the consideration attributable to the sale is fixed and determinable  
3.26 by the seller at the time of the sale of the item to the purchaser; and

3.27 (4) one of the following criteria is met:

3.28 (i) the purchaser presents a coupon, certificate, or other documentation to the seller  
3.29 to claim a price reduction or discount when the coupon, certificate, or documentation is  
3.30 authorized, distributed, or granted by a third party with the understanding that the third party  
3.31 will reimburse any seller to whom the coupon, certificate, or documentation is presented;

3.32 (ii) the purchaser identifies himself or herself to the seller as a member of a group or  
3.33 organization entitled to a price reduction or discount. A "preferred customer" card that is  
3.34 available to any customer does not constitute membership in such a group; or

4.1 (iii) the price reduction or discount is identified as a third-party price reduction or  
 4.2 discount on the invoice received by the purchaser or on a coupon, certificate, or other  
 4.3 documentation presented by the purchaser.

4.4 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 4.5 or after January 1, 2018.

4.6 Sec. 3. Minnesota Statutes 2014, section 297A.61, subdivision 24, is amended to read:

4.7 Subd. 24. **Telecommunications services.** (a) "Telecommunications services" means  
 4.8 the electronic transmission, conveyance, or routing of voice, data, audio, video, or any  
 4.9 other information or signals to a point, or between or among points.

4.10 (b) Telecommunications services include transmission, conveyance, or routing in  
 4.11 which computer processing applications are used to act on the form, code, or protocol  
 4.12 of the content for purposes of transmission, conveyance, or routing, without regard to  
 4.13 whether the service is referred to as Voice over Internet Protocol services or is classified  
 4.14 by the Federal Communications Commission as enhanced or value added.

4.15 (c) Telecommunications services do not include:

4.16 ~~(1) data processing and information services that allow data to be generated;~~  
 4.17 ~~acquired, stored, processed, or retrieved and delivered by an electronic transmission to~~  
 4.18 ~~a purchaser when the purchaser's primary purpose for the underlying transaction is the~~  
 4.19 ~~processed data or information;~~

4.20 ~~(2) installation or maintenance of wiring or equipment on a customer's premises;~~

4.21 ~~(3) tangible personal property;~~

4.22 ~~(4) advertising, including, but not limited to, directory advertising;~~

4.23 ~~(5) billing and collection services provided to third parties;~~

4.24 ~~(6) Internet access service;~~

4.25 ~~(7) radio and television audio and video programming services, regardless of the~~  
 4.26 ~~medium, including the furnishing of transmission, conveyance, and routing of such~~  
 4.27 ~~services by the programming service provider. Radio and television audio and video~~  
 4.28 ~~programming services includes, but is not limited to, cable service as defined in United~~  
 4.29 ~~States Code, title 47, section 522(6), and audio and video programming services delivered~~  
 4.30 ~~by commercial mobile radio service providers, as defined in Code of Federal Regulations,~~  
 4.31 ~~title 47, section 20.3;~~

4.32 ~~(8) ancillary services; or~~

4.33 (9) digital products delivered electronically, including, but not limited to, software,  
 4.34 music, video, reading materials, or ring tones.

5.1 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
5.2 or after January 1, 2018.

5.3 **Sec. 4. [297A.611] ADDITIONAL FAIR TAX DEFINITIONS.**

5.4 Subdivision 1. **Applicability.** The following words, terms, and phrases when used  
5.5 in this chapter have the meanings given them in this section, unless the context clearly  
5.6 indicates a different meaning.

5.7 Subd. 2. **Fair tax.** "Fair tax" means the sales and use tax imposed under this chapter  
5.8 and incorporated into the gross sales price of all taxable property and taxable services.

5.9 Subd. 3. **Basic interest rate.** "Basic interest rate" means:

5.10 (1) in the case of a debt instrument, investment, financing lease, or account with a  
5.11 term of not over three years, the applicable interest rate is a short-term rate based on the  
5.12 average market yield during any one month on outstanding marketable obligations of the  
5.13 United States with remaining periods to maturity of three years or fewer;

5.14 (2) in the case of a debt instrument, investment, financing lease, or account with a  
5.15 term of over three years but not over nine years, the applicable interest rate is a mid-term  
5.16 rate based on the average market yield during any one month on outstanding marketable  
5.17 obligations of the United States with remaining periods to maturity of more than three  
5.18 years but not over nine years; or

5.19 (3) in the case of a debt instrument, investment, financing lease, or account with a  
5.20 term over nine years, the applicable interest rate is a long-term rate based on the average  
5.21 market yield during any one month on outstanding marketable obligations of the United  
5.22 States with remaining periods to maturity of over nine years.

5.23 Subd. 4. **Business purpose.** "Business purpose" means a purchase made by a  
5.24 person engaged in a trade or business and used in that trade or business for resale, to  
5.25 produce, provide, render, or sell taxable property or taxable services, or in furtherance of  
5.26 other bona fide business purposes.

5.27 Subd. 5. **Business use conversion.** "Business use conversion" means the use of  
5.28 taxable property or taxable services upon which tax was imposed and actually paid that  
5.29 commenced to be 95 percent or more used for business purposes.

5.30 Subd. 6. **Dependent.** (a) "Dependent" means a resident of this state with a valid  
5.31 Social Security number who is:

5.32 (1) under the age of 18 and is not a legally emancipated minor; or

5.33 (2) 18 years of age or older and a registered student during not fewer than five  
5.34 months in a calendar year who receives over 50 percent of their support during a calendar

6.1 year from a family member or legal guardian, regardless of whether the individual lives in  
6.2 a common residence with a qualified family.

6.3 (b) For purposes of this subdivision "legally emancipated minor" means a person  
6.4 under the age of 18 years who:

6.5 (1) has been married;

6.6 (2) is on active duty in the uniformed services of the United States;

6.7 (3) has been emancipated by a court of competent jurisdiction; or

6.8 (4) is otherwise considered emancipated under Minnesota law, and for whom  
6.9 county social services has not determined that a social services case plan is necessary,  
6.10 for reasons other than the child has failed or refuses to cooperate with the county agency  
6.11 in developing the plan, and a child living on their own pursuant to section 260C.201,  
6.12 subdivision 1, paragraph (a), clause (5).

6.13 (c) For purposes of this subdivision, a dependent whose parents are divorced or legally  
6.14 separated is treated as a dependent of the custodial parent, and in cases of joint custody,  
6.15 the custodial parent is the parent that has custody of the child for more than one-half of the  
6.16 time during a given calendar year. A parent entitled to be treated as the custodial parent  
6.17 under this paragraph may release the claim to the other parent if the release is in writing.

6.18 Subd. 7. **Education and training costs.** "Education and training costs" includes  
6.19 tuition for primary, secondary, or postsecondary level education, and job-related training  
6.20 courses. Education and training does not include costs for room, board, sports activities,  
6.21 recreational activities, hobbies, games, arts or crafts, or cultural activities.

6.22 Subd. 8. **Explicitly charged fees.** "Explicitly charged fees" means:

6.23 (1) brokerage fees;

6.24 (2) explicitly stated banking, loan origination, processing, documentation, credit  
6.25 check fees, or other similar fees;

6.26 (3) safe deposit box fees;

6.27 (4) trustees' fees; and

6.28 (5) other financial services fees, including mutual fund management, sales, and  
6.29 exit fees.

6.30 Subd. 9. **Financial intermediation services.** The value of "financial intermediation  
6.31 services" means the sum of:

6.32 (1) explicitly charged fees for financial intermediation services; and

6.33 (2) implicitly charged fees for financial intermediation services.

6.34 Subd. 10. **Government enterprise.** "Government enterprise" means an entity owned  
6.35 and operated by a federal, state, or local governmental unit or political subdivision that

7.1 receives gross payments from private persons, provided that in any quarter in the calendar  
7.2 year it has revenues from selling taxable property or taxable services that exceed \$2,500.

7.3 Subd. 11. **Gross imputed amount.** "Gross imputed amount" means:

7.4 (1) with respect to any underlying interest-bearing investment or account, the  
7.5 product of:

7.6 (i) the excess of the basic interest rate over the rate paid on the investment; and

7.7 (ii) the amount of the investment or account; or

7.8 (2) with respect to any underlying interest-bearing debt, the product of:

7.9 (i) the excess of the rate paid on the debt over the basic interest rate; and

7.10 (ii) the amount of the debt.

7.11 Subd. 12. **Gross payment.** "Gross payment" means the total amount charged for  
7.12 taxable property and taxable services, including the taxes imposed under this chapter.

7.13 Subd. 13. **Implicitly charged fees.** "Implicitly charged fees" means the gross  
7.14 imputed amount in relation to any underlying interest-bearing investment, account, or debt.

7.15 Subd. 14. **Intangible property.** "Intangible property" includes copyrights,  
7.16 trademarks, patents, goodwill, financial instruments, securities, commercial paper, debts,  
7.17 notes and bonds, and other property deemed intangible under state law. Intangible  
7.18 property does not include tangible personal property or rents or a leasehold of any term  
7.19 on the tangible personal property, real property or rents or leaseholds of any term on  
7.20 the real property, or computer software.

7.21 Subd. 15. **Investment purpose.** "Investment purpose" means the purchase of  
7.22 property exclusively for the purpose of appreciation or the production of income but not  
7.23 entailing more than minor personal efforts.

7.24 Subd. 16. **Mixed-use property.** "Mixed-use property" means a taxable property or  
7.25 taxable service used for both taxable use or consumption and for a business purpose.

7.26 Subd. 17. **Net payment.** "Net payment" means the total amount charged for taxable  
7.27 property or taxable services, excluding the taxes imposed under this chapter.

7.28 Subd. 18. **Nonprofit organization.** "Nonprofit organization" means any corporation,  
7.29 society, association, foundation, or institution organized and operated exclusively for  
7.30 charitable, religious, fraternal, civic, or educational purposes, and which is exempt from  
7.31 federal income taxation pursuant to section 501(c) of the Internal Revenue Code.

7.32 Subd. 19. **Produce, provide, render, or sell taxable property or taxable services.**  
7.33 "Produce, provide, render, or sell taxable property or taxable services" includes the  
7.34 following:

7.35 (1) a taxable property or taxable service is used to produce, provide, render, or sell  
7.36 a taxable property or taxable service if the property or service is purchased by a person

8.1 engaged in a trade or business for the purpose of employing or using the taxable property  
8.2 or taxable service in the production, provision, rendering, or sale of other taxable property  
8.3 or taxable services in the ordinary course of that trade or business;

8.4 (2) taxable property or taxable services used in a trade or business for the purpose of  
8.5 research, experimentation, testing, and development is treated as used to produce, provide,  
8.6 render, or sell taxable property or taxable services;

8.7 (3) taxable property or taxable services purchased by an insurer on behalf of an  
8.8 insured is treated as used to produce, provide, render, or sell taxable property or taxable  
8.9 services if the premium for the insurance contract giving rise to the insurer's obligation  
8.10 was subject to tax on financial intermediation services under this chapter; and

8.11 (4) education and training are treated as services used to produce, provide, render, or  
8.12 sell taxable property or taxable services.

8.13 Subd. 20. **Qualified family.** "Qualified family" consists of the following persons  
8.14 sharing a common residence:

8.15 (1) a qualified individual;

8.16 (2) the qualified individual's spouse; and

8.17 (3) all dependents of either the qualified individual, their spouse, or both the  
8.18 qualified individual and their spouse, including dependents that are students living away  
8.19 from the common residence for part of the year.

8.20 Subd. 21. **Qualified individual.** "Qualified individual" means a resident of this state  
8.21 with a valid Social Security number who does not meet the definition of dependent.

8.22 Subd. 22. **Taxable employer.** (a) "Taxable employer" includes, but is not limited to,  
8.23 the following:

8.24 (1) any household employing domestic servants; and

8.25 (2) any government except for government enterprises.

8.26 (b) Taxable employer does not include any employer that is:

8.27 (1) engaged in a trade or business;

8.28 (2) a nonprofit organization; or

8.29 (3) a government enterprise.

8.30 Taxable employer does not include the federal government or its agencies, until such time  
8.31 as federal law allows state taxation of the federal government.

8.32 Subd. 23. **Taxable property; taxable service.** (a) "Taxable property" means any  
8.33 tangible personal property and all digital products including, but not limited to, the  
8.34 following:



9.1 (1) property purchased for business use but subsequently converted to personal use,  
 9.2 which is subject to the tax imposed by this section at the fair market value of the converted  
 9.3 property as of the date of conversion;

9.4 (2) leaseholds of any term;

9.5 (3) rents with respect to the property;

9.6 (4) property exchanged in barter transactions, which must be taxed as if the  
 9.7 transaction was made in cash; and

9.8 (5) mixed-use property, to the extent the property is used for a personal and not  
 9.9 a business purpose.

9.10 (b) "Taxable service" means any service, including any financial intermediation  
 9.11 service, any service performed by an employee for which the employee is paid wages by a  
 9.12 taxable employer, but shall not include any service performed by an employee for which  
 9.13 the employee is paid wages by:

9.14 (1) an employer in the regular course of the employer's trade or business;

9.15 (2) an employer that is a nonprofit organization;

9.16 (3) an employer that is a government enterprise; or

9.17 (4) taxable employers to employees directly providing education and training.

9.18 (c) Taxable property and taxable service do not include any intangible property  
 9.19 or used property or property held exclusively for an investment purpose, or any state  
 9.20 government functions that do not constitute the final consumption of property or services.

9.21 (d) Taxable property and taxable service include sales of property or services by a  
 9.22 nonprofit organization for fund-raising purposes.

9.23 Subd. 24. **Used property.** "Used property" means property for which the tax under  
 9.24 this chapter has been collected and for which no credit has been allowed, or property that  
 9.25 was held other than for a business purpose on December 31, 2013.

9.26 Subd. 25. **Wages.** "Wages" means all compensation paid for employment service  
 9.27 including salaries, cash compensation, employee benefits, disability insurance, wage  
 9.28 replacement insurance payments, unemployment compensation insurance, workers'  
 9.29 compensation insurance, and the fair market value of any other consideration paid by an  
 9.30 employer to an employee in consideration for employment services rendered.

9.31 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 9.32 or after January 1, 2018.

9.33 Sec. 5. Minnesota Statutes 2014, section 297A.62, subdivision 1, is amended to read:

9.34 Subdivision 1. **Generally.** Except as otherwise provided in ~~subdivision 3 or in this~~  
 9.35 ~~chapter, a sales tax of 6.5 percent at the rate calculated under section 13~~ is imposed on the

10.1 ~~gross receipts from retail sales as defined in section 297A.61, subdivision 4, net payments~~  
 10.2 ~~on the production, provision, rendering, or selling of taxable property or taxable services~~  
 10.3 ~~made in this state or to a destination in this state by a person who is required to have or~~  
 10.4 ~~voluntarily obtains a permit under section 297A.83, subdivision 1.~~

10.5 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 10.6 or after January 1, 2018.

10.7 Sec. 6. Minnesota Statutes 2014, section 297A.62, subdivision 1a, is amended to read:

10.8 Subd. 1a. **Constitutionally required sales tax increase.** Except as otherwise  
 10.9 provided in ~~subdivision 3 or in this chapter~~, an additional sales tax of 0.375 percent,  
 10.10 adjusted as determined under section 13 as required under the Minnesota Constitution,  
 10.11 article XI, section 15, is imposed on the ~~gross receipts from retail sales as defined in~~  
 10.12 ~~section 297A.61, subdivision 4, net payments on the production, provision, rendering, or~~  
 10.13 ~~selling of taxable property or taxable services~~ made in this state or to a destination in this  
 10.14 state by a person who is required to have or voluntarily obtains a permit under section  
 10.15 297A.83, subdivision 1. This additional tax expires July 1, 2034.

10.16 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 10.17 or after January 1, 2018.

10.18 Sec. 7. **[297A.625] PROHIBITION ON CERTAIN TAXES; IMPOSITION OF**  
 10.19 **THE FAIR TAX.**

10.20 (a) For taxable years beginning after December 31, 2017, imposition of the  
 10.21 following taxes are prohibited:

10.22 (1) individual income and corporate franchise taxes;

10.23 (2) insurance taxes;

10.24 (3) occupation taxes; and

10.25 (4) sales, excise, and gross receipts taxes other than the taxes under this chapter and  
 10.26 chapters 296A and 297B.

10.27 (b) For taxable years beginning after December 31, 2017, all revenues lost as a result  
 10.28 of the repeal of the taxes under paragraph (a) shall be replaced by the levy and imposition  
 10.29 of a sales tax upon all final use or consumption of taxable property or taxable services  
 10.30 in this state. The sales tax under this chapter shall be renamed the "fair tax" and the  
 10.31 rates under section 297A.62 shall be modified to the rates determined under section 13.  
 10.32 The fair tax shall be incorporated into the gross payment and sales price for all taxable  
 10.33 goods and services.

11.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.2 Sec. 8. Minnesota Statutes 2014, section 297A.63, is amended by adding a subdivision  
11.3 to read:

11.4 Subd. 4. **Conversion of business purchases to personal use.** Use tax is owed on  
11.5 property and services purchased exempt from the tax under this chapter as a purchase for  
11.6 business use that is subsequently used more than five percent for personal use. The tax is  
11.7 owed on the value of the property or service at the time of conversion. This includes the  
11.8 conversion of housing from rental or other business property to personal use by the owner.

11.9 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
11.10 or after January 1, 2018.

11.11 Sec. 9. Minnesota Statutes 2014, section 297A.66, subdivision 3, is amended to read:

11.12 Subd. 3. **Retailer not maintaining place of business in this state.** (a) To the  
11.13 extent allowed by the United States Constitution and in accordance with the terms and  
11.14 conditions of federal remote seller law, a retailer making retail sales from outside this state  
11.15 to a destination within this state and not maintaining a place of business in this state shall  
11.16 collect sales and use taxes and remit them to the commissioner under section 297A.77.

11.17 ~~(b) To the extent allowed by the United States Constitution and the laws of the~~  
11.18 ~~United States, a retailer making retail sales from outside this state to a destination within~~  
11.19 ~~this state and not maintaining a place of business in this state shall collect sales and use~~  
11.20 ~~taxes and remit them to the commissioner under section 297A.77, if the retailer engages in~~  
11.21 ~~the regular or systematic soliciting of sales from potential customers in this state by:~~

11.22 ~~(1) distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers, or~~  
11.23 ~~other written solicitations of business to customers in this state;~~

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

11.25 ~~(3) advertisements in newspapers published in this state;~~

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

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

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

12.1 ~~(7) advertisements broadcast on a radio or television station located in Minnesota; or~~  
12.2 ~~(8) any other solicitation by telegraphy, telephone, computer database, cable, optic,~~  
12.3 ~~microwave, or other communication system.~~

12.4 ~~This paragraph must be construed without regard to the state from which distribution~~  
12.5 ~~of the materials originated or in which they were prepared.~~

12.6 ~~(e) The location within or without this state of independent vendors that provide~~  
12.7 ~~products or services to the retailer in connection with its solicitation of customers within this~~  
12.8 ~~state, including such products and services as creation of copy, printing, distribution, and~~  
12.9 ~~recording, is not considered in determining whether the retailer is required to collect tax.~~

12.10 ~~(d) A retailer not maintaining a place of business in this state is presumed, subject to~~  
12.11 ~~rebuttal, to be engaged in regular solicitation within this state if it engages in any of the~~  
12.12 ~~activities in paragraph (b) and:~~

12.13 ~~(1) makes 100 or more retail sales from outside this state to destinations in this state~~  
12.14 ~~during a period of 12 consecutive months; or~~

12.15 ~~(2) makes ten or more retail sales totaling more than \$100,000 from outside this state~~  
12.16 ~~to destinations in this state during a period of 12 consecutive months.~~

12.17 (b) A retailer that is not subject to paragraph (a) that does not maintain a place of  
12.18 business in this state but made taxable sales of at least \$1,000,000 in the previous year  
12.19 from outside this state to destinations within this state shall collect sales and use taxes but  
12.20 shall be compensated for the administrative costs related to the collection and remittance  
12.21 of the sales tax. The commissioner shall, after reviewing the recommendations of the  
12.22 advisory task force established in section 12, develop a method for calculating and paying  
12.23 the compensation required under this paragraph. If a retailer subject to this paragraph and  
12.24 the commissioner are unable to agree on the method for calculating compensation and  
12.25 the retailer demands arbitration, the matter must be submitted to binding arbitration in  
12.26 accordance with chapter 572B, and the rules of the American Arbitration Association.  
12.27 Retailers subject to this paragraph may choose to combine into a single group and jointly  
12.28 request that their objections be combined and dealt with in a single arbitration. Within 30  
12.29 days after the demand for arbitration, the parties shall each select an arbitrator or agree  
12.30 upon a single arbitrator. If the parties each select an arbitrator, the two arbitrators shall  
12.31 select a third arbitrator within 45 days after the demand for arbitration. Each party shall  
12.32 pay the fees and expenses of the arbitrator it selected and the parties shall share equally  
12.33 the expenses of the third arbitrator or an arbitrator agreed upon mutually by the parties.

12.34 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
12.35 or after January 1, 2018.

13.1 Sec. 10. **[297A.712] EXEMPTIONS.**

13.2 **Subdivision 1. Scope.** The net payments from the sale, storage, distribution, use,  
13.3 or consumption of the taxable property and taxable services contained in this section are  
13.4 specifically exempted from the taxes imposed under this chapter.

13.5 **Subd. 2. Purchased for a business purpose.** Taxable property or taxable services  
13.6 purchased by a person engaged in a trade or business are exempt if used in that trade or  
13.7 business:

13.8 (1) for resale;

13.9 (2) to produce, provide, render, or sell taxable property or taxable services; or

13.10 (3) in furtherance of other bona fide business purposes.

13.11 **Subd. 3. Purchased for use outside of the state.** Taxable property or taxable  
13.12 services purchased for export from Minnesota for use or consumption outside of the  
13.13 state are exempt.

13.14 **Subd. 4. Purchased for an investment purpose.** Taxable property purchased  
13.15 exclusively for appreciation or the production of income with minor personal effort are  
13.16 exempt.

13.17 **Subd. 5. Purchases by a government enterprise.** Taxable property and taxable  
13.18 services purchased by a government enterprise are exempt.

13.19 **Subd. 6. Education costs.** Education and training costs paid to an accredited  
13.20 institution of higher education are exempt. Tuition paid to an accredited elementary school  
13.21 or secondary school program is also exempt.

13.22 **Subd. 7. Petroleum and other fuels.** Purchases of petroleum and other fuels subject  
13.23 to the tax under chapter 296A are exempt.

13.24 **Subd. 8. Purchases by and goods and services provided by certain nonprofit**  
13.25 **organizations.** (a) Taxable property and taxable services purchased by a qualifying  
13.26 nonprofit organization are exempt if used for the purposes allowed for that nonprofit  
13.27 under this subdivision.

13.28 (b) Taxable property and taxable services provided to others by a qualifying  
13.29 nonprofit organization are exempt if used for the purposes allowed for that nonprofit  
13.30 organization under this subdivision.

13.31 (c) For purposes of this subdivision "qualifying nonprofit organization" means  
13.32 one of the following:

13.33 (1) a corporation, society, association, foundation, or institution organized and  
13.34 operated exclusively for charitable, religious, or education purposes, including the  
13.35 maintenance of a cemetery owned by a religious organization;

13.36 (2) any senior citizen group or association of groups that:

14.1 (i) in general limits membership to persons who are either age 55 or older, or  
 14.2 physically disabled;

14.3 (ii) is organized and operated exclusively for pleasure, recreation, and other  
 14.4 nonprofit purposes, not including housing, no part of the net earnings of which inures to  
 14.5 the benefit of any private shareholders; and

14.6 (iii) is an exempt organization under section 501(c) of the Internal Revenue Code;

14.7 (3) an organization of military service veterans or an auxiliary unit of an organization  
 14.8 of military service veterans are exempt if:

14.9 (i) the organization or auxiliary unit is organized within Minnesota and is exempt  
 14.10 from federal taxation under section 501(c), clause (19), of the Internal Revenue Code; and

14.11 (ii) the tangible personal property or services are purchased for charitable, civic,  
 14.12 educational, or nonprofit uses and not for social, recreational, pleasure, or profit uses; and

14.13 (4) a nonprofit organization that exists solely for the purpose of providing  
 14.14 educational or social activities for young people primarily age 18 and under.

14.15 Subd. 9. **Purchase by the federal government.** Taxable property and taxable  
 14.16 services purchased by the United States and its agencies and instrumentalities are exempt.  
 14.17 Any state or local government purchases made with funds received from the federal  
 14.18 government are also exempt to the extent required under federal law.

14.19 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 14.20 or after January 1, 2018.

14.21 Sec. 11. **[297A.755] CREDITS AND REFUNDS.**

14.22 Subdivision 1. **Generally.** (a) Each person shall be allowed a credit with respect to  
 14.23 the taxes imposed under this chapter for each month equal to the sum of:

14.24 (1) the business use conversion credit under subdivision 2;

14.25 (2) the intermediate and export sales credit under subdivision 3;

14.26 (4) the insurance proceeds credit under subdivision 4;

14.27 (5) the bad debt credit under section 297A.81; or

14.28 (6) any amount paid in excess of the amount due.

14.29 (b) Only one credit paid may be taken with respect to the sale or purchase of any  
 14.30 particular taxable property or taxable service.

14.31 (c) Each qualified person shall be paid a monthly sales tax rebate, as determined  
 14.32 under section 14.

14.33 Subd. 2. **Business use conversion credit.** A person is eligible for a credit for  
 14.34 the fair tax paid on taxable property and taxable services if the property or service is

15.1 subsequently used at least 95 percent for business purposes. The credit is equal to the tax  
 15.2 included in the gross payment on the taxable property or taxable service.

15.3 Subd. 3. **Intermediate and export credit.** A person is eligible for a credit for the  
 15.4 fair tax paid on the purchase of any taxable property or taxable service purchased for a  
 15.5 business purpose in a trade or business or exported from the state for use or consumption  
 15.6 outside of the state.

15.7 Subd. 4. **Insurance proceeds credit.** (a) Any person receiving a payment from an  
 15.8 insurer by virtue of an insurance contract, if the insurance premium is subject to the tax  
 15.9 under this chapter, shall be entitled to a credit in an amount equal to the product of the tax  
 15.10 rates imposed under section 297A.62 and the amount of the payment made by the insurer,  
 15.11 adjusted as required in paragraphs (b) and (c). For purposes of this section, "insurance  
 15.12 contract" shall include the following insurance contracts:

- 15.13 (1) life;
- 15.14 (2) health;
- 15.15 (3) property and casualty loss;
- 15.16 (4) general liability;
- 15.17 (5) marine;
- 15.18 (6) fire;
- 15.19 (7) accident;
- 15.20 (8) disability;
- 15.21 (9) long-term care; or
- 15.22 (10) any combination of clauses (1) to (9).

15.23 (b) The credit under paragraph (a) shall be paid by the insurer to the insured and the  
 15.24 insurer shall be entitled to the credit in lieu of the insured, except that the insurer may  
 15.25 elect, in a form prescribed by the commissioner, to not pay the credit and require the  
 15.26 insured to apply for the credit. In the event of such election, the insurer must provide the  
 15.27 commissioner and the insured the name and tax identification number of the insurer and of  
 15.28 the insured and indicate the proper amount of the credit.

15.29 (c) If taxable property or taxable services purchased by an insurer on behalf of the  
 15.30 insured are purchased free of tax as a purchase for use in a trade or business, then the  
 15.31 credit is not available for that purchase.

15.32 **EFFECTIVE DATE.** This section is effective for sales and purchases made on  
 15.33 or after January 1, 2018.

15.34 Sec. 12. **FAIR TAX LEGISLATION; ADVISORY TASK FORCE.**

16.1 Subdivision 1. **Proposed legislation.** No later than February 1, 2017, the  
16.2 commissioner of revenue shall submit legislation to the chairs and ranking minority  
16.3 members of the legislative committees having jurisdiction over taxes in the senate and  
16.4 the house of representatives recommending the modification, repeal, or enactment of any  
16.5 provision of law made necessary by the repeal or modification of state taxes under this act,  
16.6 or to ensure compliance with the intent of this act, and the enactment or to implement the  
16.7 provisions of this act. The commissioner shall consult with the advisory group established  
16.8 in subdivision 2 in developing the proposed legislation. The sourcing of sales, the duty  
16.9 to collect and remit the tax, penalties, and other administrative provisions related to the  
16.10 fair tax shall follow as closely as practical the sourcing, collection, remittance, penalties,  
16.11 and administrative provisions of the existing sales tax with the exception that the fair tax  
16.12 must be included in the sales price and not stated separately by the retailer. The legislation  
16.13 shall include, at a minimum, the following:

16.14 (1) the repeal of any provision of law relating to withholding taxes;

16.15 (2) the repeal of any provision of law related to the prohibited taxes under Minnesota  
16.16 Statutes, section 297A.625;

16.17 (3) the repeal of the tax exemptions and deductions and administrative provisions  
16.18 related to the repeal of the taxes prohibited under Minnesota Statutes, section 297A.625;

16.19 (4) the fair tax rate necessary to replace the current sales and use tax revenue and the  
16.20 revenues lost as a result of the repeal of the taxes prohibited under Minnesota Statutes,  
16.21 section 297A.625;

16.22 (5) any modifications necessary to include the fair tax in the reported sale price of  
16.23 all taxable property, including reporting and remittance requirements for the fair tax  
16.24 collected by sellers;

16.25 (6) the method for collecting the fair tax;

16.26 (7) record-keeping requirements for all sellers;

16.27 (8) a vendor allowance provision to compensate all sellers and other remitters of the  
16.28 tax to offset their costs of complying with the tax;

16.29 (9) the method for providing each qualified taxpayer with a payment to offset the  
16.30 burden on taxation of basic necessities as required by section 14;

16.31 (10) any provisions necessary for administering the credits allowed in Minnesota  
16.32 Statutes, section 297A.755;

16.33 (11) provisions for reporting wages to the Social Security Administration;

16.34 (12) the statutory, language, and cross-reference changes necessary to effect the  
16.35 provisions of this act, including the repeal of all sections related to the prohibition of the  
16.36 taxes in Minnesota Statutes, section 297A.625;



17.1 (13) recommendations for changes in rate or duration for all local sales taxes to  
17.2 reflect the expanded tax base under the fair tax;

17.3 (14) recommendations for changes to existing local sales tax laws to allow their  
17.4 administration with the fair tax; and

17.5 (15) any other recommendation or provision necessary to effect the provisions  
17.6 of this act.

17.7 Subd. 2. **Fair Tax Advisory Task Force.** (a) The Fair Tax Advisory Task Force  
17.8 shall provide advice to the commissioner of revenue related to the development of the  
17.9 legislation required in subdivision 1.

17.10 (b) The task force shall consist of the following individuals or their designees:

17.11 (1) the commissioner of revenue;

17.12 (2) three senators who serve on the committee having jurisdiction over taxes, chosen  
17.13 by the Subcommittee on Committees of the senate Committee on Rules and Administration,  
17.14 of which two appointees shall be from the majority party and one from the minority party;

17.15 (3) three representatives who serve on the committee having jurisdiction over taxes,  
17.16 chosen by the speaker of the house, of which two appointees shall be from the majority  
17.17 party and one from the minority party;

17.18 (4) one representative from the tax section of the Minnesota Bar Association,  
17.19 selected by that association;

17.20 (5) one representative from the Minnesota Society of Certified Public Accountants,  
17.21 selected by that organization;

17.22 (6) a representative from the Minnesota Retailers Association, selected by the  
17.23 advisory task force;

17.24 (7) a representative of the banking and credit union industry, selected by the  
17.25 advisory board;

17.26 (8) two private citizens chosen by the speaker of the house; and

17.27 (9) two private citizens chosen by the majority leader of the senate.

17.28 (c) The advisory task force may adopt procedures to govern its conduct and shall  
17.29 select a chair from among its members. All members serve at the pleasure of their  
17.30 appointing authority.

17.31 (d) The advisory task force shall assist the commissioner in identifying specific  
17.32 statutes and issues needed to be addressed in prohibiting the taxes listed in Minnesota  
17.33 Statutes, section 297A.655 and replacing the lost revenues with the fair tax. It will  
17.34 also review and offer recommendations on drafts of the legislation developed by the  
17.35 commissioner under subdivision 1.

18.1 (e) The commissioner may accept lawful grants and in-kind contributions from any  
18.2 federal, state, or local source or legal business or individual for general operation support,  
18.3 including personnel costs. The staff from the Department of Revenue shall provide the  
18.4 primary staffing for the advisory task force, although senate and house of representatives  
18.5 legislative staff may also provide assistance at the discretion of the senate and house of  
18.6 representatives members.

18.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

18.8 Sec. 13. **FAIR TAX RATE.**

18.9 The commissioner shall determine a method for setting the fair tax rate for the tax  
18.10 required under this act to replace the anticipated state revenue loss due to the prohibition  
18.11 of the taxes in Minnesota Statutes, section 297A.655, and the change from the existing  
18.12 sales tax to the fair tax under this act. The commissioner shall determine the rate change  
18.13 necessary to reduce the heritage tax rate by a revenue neutral amount as allowed under the  
18.14 Minnesota Constitution, article XI, section 15. The rates determined under this section  
18.15 shall be the tax rates under Minnesota Statutes, section 297A.62, subdivisions 1 and 1a,  
18.16 for all sales and purchases made on or after January 1, 2018.

18.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

18.18 Sec. 14. **MONTHLY SALES TAX REBATE.**

18.19 The commissioner shall determine a method for providing a monthly sales tax  
18.20 rebate for each qualified person. The sales tax rebate must be distributed to each qualified  
18.21 family on or before the first business day of the month for which the sales tax rebate is  
18.22 being provided. The amount of the sales tax rebate must be determined annually and be  
18.23 equal to the product of the rate of the sales tax established under Minnesota Statutes,  
18.24 section 297A.62, and 1/12 of the annual poverty guidelines updated periodically in the  
18.25 Federal Register by the United States Department of Health and Human Services under  
18.26 the authority of United States Code, title 42, section 9902(2), as amended. If a qualified  
18.27 family contains two qualified individuals, the amount of the sales tax rebate will be based  
18.28 on the annual poverty guidelines for a family of one plus the annual poverty guidelines for  
18.29 a family size equal to one less than the number of persons in the qualified family.

18.30 **EFFECTIVE DATE.** This section is effective the day following final enactment  
18.31 and rebates under this section shall be paid beginning January 1, 2018.

18.32 Sec. 15. **REPEALER.**

19.1 (a) Minnesota Statutes 2014, sections 290.01, subdivisions 1, 1a, 2, 3, 3a, 3b, 4, 4a,  
19.2 4c, 5, 5a, 5b, 6, 7, 7a, 7b, 8, 8a, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19a, 19b, 19c, 19d,  
19.3 19f, 19h, 20, 22, 29, 29a, and 30; 290.014; 290.015; 290.02; 290.03; 290.032, subdivisions  
19.4 1, 2, and 3; 290.04; 290.05, subdivisions 1, 2, 3, 4, and 8; 290.06, subdivisions 1, 2c, 2d,  
19.5 22, 23, 27, 28, 29, 33, 35, and 36; 290.067, subdivisions 1, 2, 2a, 2b, 3, and 4; 290.0671,  
19.6 subdivisions 1a, 2, 4, 5, 6, and 7; 290.0672; 290.0674, subdivisions 1, 2, 4, and 5;  
19.7 290.0675, subdivisions 1, 2, 3, and 4; 290.0677; 290.0679; 290.068, subdivisions 1, 2,  
19.8 3, 4, 5, 6a, and 7; 290.0681; 290.0692; 290.07, subdivisions 1, 2, 4, and 7; 290.0802;  
19.9 290.081; 290.091; 290.0921, subdivisions 1, 2, 3, 3a, 4, 6, and 8; 290.0922; 290.093;  
19.10 290.095, subdivisions 1, 2, 3, 4, 5, 9, and 11; 290.10; 290.17, subdivisions 1, 2, 3, 4, 5,  
19.11 and 6; 290.172; 290.191, subdivisions 1, 2, 3, 5, 6, 8, 9, 10, 11, and 12; 290.20; 290.21,  
19.12 subdivisions 1 and 4; 290.22; 290.26, subdivision 6; 290.281, subdivision 1; 290.30;  
19.13 290.31, subdivisions 1 and 27; 290.311, subdivision 1; 290.32; 290.34, subdivisions 1 and  
19.14 2; 290.36; 290.371, subdivisions 1, 2, 3, and 4; 290.431; 290.432; 290.48, subdivision 10;  
19.15 290.491; 290.62; 290.92, subdivisions 1, 2a, 3, 4, 4a, 4b, 4c, 5, 5a, 9, 10, 12, 16, 17, 19,  
19.16 20, 21, 24, 25, 26, 27, 28, 29, and 30; 290.9201, subdivisions 1, 2, 6, 7, 8, and 11; 290.923,  
19.17 subdivisions 1, 2, 3, 4, 5, 6, 8, 9, 10, and 11; 290.9705, subdivisions 1, 3, and 4; 290.9725;  
19.18 290.9726, subdivisions 1, 2, and 4; 290.9727; 290.9728; 290.9729; 290.9741; 290.9742;  
19.19 290.9743; 290.9744; 297D.01; 297D.02; 297D.03; 297D.04; 297D.05; 297D.06; 297D.07;  
19.20 297D.08; 297D.085; 297D.09; 297D.10; 297D.11; 297D.12; 297D.13; 297F.01; 297F.02;  
19.21 297F.03; 297F.031; 297F.04; 297F.05; 297F.06; 297F.07; 297F.08, subdivisions 1, 2, 3, 4,  
19.22 5, 6, 7, 8, 8a, 9, 10, 12, and 13; 297F.09, subdivisions 1, 2, 3, 4, 4a, 5, 7, 8, 9, and 10;  
19.23 297F.10; 297F.11; 297F.12; 297F.13; 297F.14; 297F.15, subdivisions 9 and 10; 297F.17;  
19.24 297F.18; 297F.185; 297F.19, subdivisions 1, 2, 3, 5, 6, 7, 8, and 9; 297F.20; 297F.21,  
19.25 subdivisions 1, 2, and 3; 297F.23; 297F.24; 297F.25; 297G.01; 297G.02; 297G.03;  
19.26 297G.031; 297G.032; 297G.04; 297G.05; 297G.06; 297G.07; 297G.08; 297G.09,  
19.27 subdivisions 1, 2, 3, 4, 6, 7, 8, 9, and 10; 297G.10; 297G.11; 297G.12; 297G.13; 297G.14,  
19.28 subdivision 9; 297G.16; 297G.17; 297G.18, subdivisions 1, 2, 3, 5, 6, 7, 8, 9, 10, and 11;  
19.29 297G.19; 297G.20, subdivisions 1, 2, 3, and 4; 297G.22; 297H.01; 297H.02; 297H.03;  
19.30 297H.04; 297H.05; 297H.06; 297H.07; 297H.08; 297H.09; 297H.10, subdivision 1;  
19.31 297H.11; 297H.115; 297H.12; 297H.13, subdivisions 1, 2, and 5; 297I.01; 297I.05,  
19.32 subdivisions 1, 2, 3, 4, 5, 7, 11, 12, 13, and 14; 297I.06; 297I.10, subdivisions 1, 3, and 4;  
19.33 297I.11; 297I.15; 297I.20; 297I.25; 297I.30, subdivisions 1, 2, 7, 8, 9, and 10; 297I.35;  
19.34 297I.40; 297I.60; 297I.65; 297I.70; 297I.75; 297I.80; 297I.85; and 297I.90, are repealed.

19.35 (b) Minnesota Statutes 2015 Supplement, sections 290.01, subdivisions 19 and 31;  
19.36 and 290.0671, subdivisions 1 and 6a, are repealed.

20.1 (c) Minnesota Statutes 2014, sections 297A.61, subdivisions 3, 4, 10, 12, 13, 16a,  
20.2 16b, 16c, 17, 17a, 17b, 18, 25, 26, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 44, 45, 46,  
20.3 and 49; 297A.62, subdivision 3; 297A.63, subdivision 2; 297A.64, subdivisions 1, 2, 3, 4,  
20.4 and 5; 297A.65; 297A.67, subdivisions 2, 3, 4, 5, 6, 7, 7a, 8, 9, 10, 11, 12, 13a, 14, 15, 16,  
20.5 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 31, and 32; 297A.68, subdivisions 1, 3, 4, 6, 7, 8,  
20.6 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35a, 36, 37, 39,  
20.7 40, 42, 43, and 44; 297A.69, subdivisions 1, 2, 3, 4, 6, and 7; 297A.70, subdivisions 1, 3, 4,  
20.8 5, 6, 7, 8, 9, 9a, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19; 297A.71, subdivisions 1, 3, 6, 8,  
20.9 11, 12, 13, 14, 22, 23, 34, 35, 40, 42, 43, 44, 45, 46, 47, and 48; and 297A.75, are repealed.

20.10 (d) Minnesota Statutes 2015 Supplement, sections 297A.67, subdivision 13;  
20.11 297A.68, subdivisions 2 and 5; and 297A.70, subdivision 2, are repealed.

20.12 **EFFECTIVE DATE.** Paragraphs (a) and (b) are effective for all taxable years  
20.13 beginning after December 31, 2017. Paragraphs (c) and (d) are effective for sales and  
20.14 purchases made after December 31, 2017.

**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, trusts, and partnerships 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, and also means designated settlement fund as defined in and taxed federally under section 468B of the Internal Revenue Code.

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, will be treated as an entity similar to its treatment for federal income tax purposes.

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(g) 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 99-514, as amended by section 1006(k) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 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, or a federal savings bank holding company.

(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 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 is authorized to do by those laws; or

(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 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 clause (1). For purposes of this clause, the computation of the gross income of a corporation does not include income from nonrecurring, extraordinary items.

Subd. 4c. **Mutual insurance holding companies.** A "mutual insurance holding company" is not an insurance company for purposes of this chapter.

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; or

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(2) which qualifies as a DISC, as defined in section 992(a) 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. 5b. **Insurance company.** The terms "insurance company," "life insurance company," and "insurance company other than life," have the meanings given in the Internal Revenue Code.

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. 7. **Resident.** (a) The term "resident" means 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.

(b) "Resident" also means 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:

(1) the individual or the spouse of the individual is in the armed forces of the United States; or

(2) 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.

(c) Neither the commissioner nor any court shall consider charitable contributions made by an individual within or without the state in determining if the individual is domiciled in Minnesota.

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.** (a) Resident trust means a trust, except a grantor type trust, which either (1) was created by a will of a decedent who at death was domiciled in this state or (2) is an irrevocable trust, the grantor of which was domiciled in this state at the time the trust became irrevocable. For the purpose of this subdivision, a trust is considered irrevocable to the extent the grantor is not treated as the owner thereof under sections 671 to 678 of the Internal Revenue Code. 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. This paragraph applies to trusts, except grantor type trusts, that became irrevocable after December 31, 1995, or are first administered in Minnesota after December 31, 1995.

(b) This paragraph applies to trusts, except grantor type trusts, that are not governed under paragraph (a). A trust, except a grantor type trust, is a resident trust only if two or more of the following conditions are satisfied:

(i) a majority of the discretionary decisions of the trustees relative to the investment of trust assets are made in Minnesota;

(ii) a majority of the discretionary decisions of the trustees relative to the distributions of trust income and principal are made in Minnesota;

(iii) the official books and records of the trust, consisting of the original minutes of trustee meetings and the original trust instruments, are located in Minnesota.

(c) For purposes of paragraph (b), if the trustees delegate decisions and actions to an agent or custodian, the actions and decisions of the agent or custodian must not be taken into account in determining whether the trust is administered in Minnesota, if:

(i) the delegation was permitted under the trust agreement;

(ii) the trustees retain the power to revoke the delegation on reasonable notice; and

(iii) the trustees monitor and evaluate the performance of the agent or custodian on a regular basis as is reasonably determined by the trustees.

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.

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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 the federal effective dates of changes to the Internal Revenue Code and 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(g) 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;

(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; and

(3) the deduction for dividends paid must also be applied in the amount of any undistributed capital gains which the regulated investment company elects to have treated as provided in section 852(b)(3)(D) 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, 2014, shall be in effect for taxable years beginning after December 31, 1996.

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

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

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(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:

(A) the portion of the exempt-interest dividends exempt from state taxation under the laws of the United States; and

(B) 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, including any dividends exempt under subitem (A), 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(g) 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, sales and use, motor vehicle sales, or excise taxes paid or accrued within the taxable year under this chapter and the amount of taxes based on net income paid, sales and use, motor vehicle sales, or excise 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 state itemized deduction exceeds the amount of the standard deduction as defined in section 63(c) of the Internal Revenue Code, minus any addition that would have been required under clause (17) if the taxpayer had claimed the standard deduction. For the purpose of this clause, income, sales and use, motor vehicle sales, or excise taxes are the last itemized deductions disallowed under clause (15);

(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 99-514, applies;

(4) the amount of income taxes paid or accrued within the taxable year under this chapter and taxes based on net income 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;

(5) the amount of expense, interest, or taxes disallowed pursuant to section 290.10 other than expenses or interest used in computing net interest income for the subtraction allowed under subdivision 19b, clause (1);

(6) the amount of a partner's pro rata share of net income which does not flow through to the partner because the partnership elected to pay the tax on the income under section 6242(a)(2) of the Internal Revenue Code;

(7) 80 percent of the depreciation deduction allowed under section 168(k) of the Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that in the taxable year generates a deduction for depreciation under section 168(k) and the activity generates a loss for the taxable year that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is limited to excess of the depreciation claimed by the activity under section 168(k) over the amount of the loss from the activity that is not allowed in the taxable year. In succeeding taxable years when the losses not allowed in the taxable year are allowed, the depreciation under section 168(k) is allowed;

(8) 80 percent of the amount by which the deduction allowed by section 179 of the Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal Revenue Code of 1986, as amended through December 31, 2003;

(9) to the extent deducted in computing federal taxable income, the amount of the deduction allowable under section 199 of the Internal Revenue Code;

(10) the amount of expenses disallowed under section 290.10, subdivision 2;

(11) for taxable years beginning before January 1, 2010, the amount deducted for qualified tuition and related expenses under section 222 of the Internal Revenue Code, to the extent deducted from gross income;

(12) for taxable years beginning before January 1, 2010, the amount deducted for certain expenses of elementary and secondary school teachers under section 62(a)(2)(D) of the Internal Revenue Code, to the extent deducted from gross income;



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(13) discharge of indebtedness income resulting from reacquisition of business indebtedness and deferred under section 108(i) of the Internal Revenue Code;

(14) changes to federal taxable income attributable to a net operating loss that the taxpayer elected to carry back for more than two years for federal purposes but for which the losses can be carried back for only two years under section 290.095, subdivision 11, paragraph (c);

(15) the amount of disallowed itemized deductions, but the amount of disallowed itemized deductions plus the addition required under clause (2) may not be more than the amount by which the itemized deductions as allowed under section 63(d) of the Internal Revenue Code exceeds the amount of the standard deduction as defined in section 63(c) of the Internal Revenue Code, and reduced by any addition that would have been required under clause (17) if the taxpayer had claimed the standard deduction:

(i) the amount of disallowed itemized deductions is equal to the lesser of:

(A) three percent of the excess of the taxpayer's federal adjusted gross income over the applicable amount; or

(B) 80 percent of the amount of the itemized deductions otherwise allowable to the taxpayer under the Internal Revenue Code for the taxable year;

(ii) the term "applicable amount" means \$100,000, or \$50,000 in the case of a married individual filing a separate return. Each dollar amount shall be increased by an amount equal to:

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code for the calendar year in which the taxable year begins, by substituting "calendar year 1990" for "calendar year 1992" in subparagraph (B) thereof;

(iii) the term "itemized deductions" does not include:

(A) the deduction for medical expenses under section 213 of the Internal Revenue Code;

(B) any deduction for investment interest as defined in section 163(d) of the Internal Revenue Code; and

(C) the deduction under section 165(a) of the Internal Revenue Code for casualty or theft losses described in paragraph (2) or (3) of section 165(c) of the Internal Revenue Code or for losses described in section 165(d) of the Internal Revenue Code;

(16) the amount of disallowed personal exemptions for taxpayers with federal adjusted gross income over the threshold amount:

(i) the disallowed personal exemption amount is equal to the number of personal exemptions allowed under section 151(b) and (c) of the Internal Revenue Code multiplied by the dollar amount for personal exemptions under section 151(d)(1) and (2) of the Internal Revenue Code, as adjusted for inflation by section 151(d)(4) of the Internal Revenue Code, and by the applicable percentage;

(ii) "applicable percentage" means two percentage points for each \$2,500 (or fraction thereof) by which the taxpayer's federal adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting "\$1,250" for "\$2,500." In no event shall the applicable percentage exceed 100 percent;

(iii) the term "threshold amount" means:

(A) \$150,000 in the case of a joint return or a surviving spouse;

(B) \$125,000 in the case of a head of a household;

(C) \$100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household; and

(D) \$75,000 in the case of a married individual filing a separate return; and

(iv) the thresholds shall be increased by an amount equal to:

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code for the calendar year in which the taxable year begins, by substituting "calendar year 1990" for "calendar year 1992" in subparagraph (B) thereof; and

(17) to the extent deducted in the computation of federal taxable income, for taxable years beginning after December 31, 2010, and before January 1, 2014, the difference between the standard deduction allowed under section 63(c) of the Internal Revenue Code and the standard deduction allowed for 2011, 2012, and 2013 under the Internal Revenue Code as amended through December 1, 2010.

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

(1) net 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;

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(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, less the amount used to claim the credit allowed under section 290.0674, not to exceed \$1,625 for each qualifying child in grades kindergarten to 6 and \$2,500 for each qualifying child in grades 7 to 12, for tuition, textbooks, and transportation of each qualifying child 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 363A. For the purposes of this clause, "tuition" includes fees or tuition as defined in section 290.0674, subdivision 1, clause (1). As used in this clause, "textbooks" includes books and other instructional materials and equipment purchased or leased for use in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state. Equipment expenses qualifying for deduction includes expenses as defined and limited in section 290.0674, subdivision 1, clause (3). "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. No deduction is permitted for any expense the taxpayer incurred in using the taxpayer's or the qualifying child's vehicle to provide such transportation for a qualifying child. For purposes of the subtraction provided by this clause, "qualifying child" has the meaning given in section 32(c)(3) of the Internal Revenue Code;

(4) income as provided under section 290.0802;

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

(6) to the extent not deducted or not deductible pursuant to section 408(d)(8)(E) of the Internal Revenue Code in determining federal taxable income by an individual who does not itemize deductions for federal income tax purposes for the taxable year, an amount equal to 50 percent of the excess of charitable contributions over \$500 allowable as a deduction for the taxable year under section 170(a) of the Internal Revenue Code, under the provisions of Public Law 109-1 and Public Law 111-126;

(7) for individuals who are allowed a federal foreign tax credit for taxes that do not qualify for a credit under section 290.06, subdivision 22, an amount equal to the carryover of subnational foreign taxes for the taxable year, but not to exceed the total subnational foreign taxes reported in claiming the foreign tax credit. For purposes of this clause, "federal foreign tax credit" means the credit allowed under section 27 of the Internal Revenue Code, and "carryover of subnational foreign taxes" equals the carryover allowed under section 904(c) of the Internal Revenue Code minus national level foreign taxes to the extent they exceed the federal foreign tax credit;

(8) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (7), or 19c, clause (12), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the delayed depreciation. For purposes of this clause, "delayed depreciation" means the amount of the addition made by the taxpayer under subdivision 19a, clause (7), or subdivision 19c, clause (12), in the case of a shareholder of an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. The resulting delayed depreciation cannot be less than zero;

(9) job opportunity building zone income as provided under section 469.316;

(10) to the extent included in federal taxable income, the amount of compensation paid to members of the Minnesota National Guard or other reserve components of the United States military for active service, including compensation for services performed under the Active Guard Reserve (AGR) program. For purposes of this clause, "active service" means (i) state active service as defined in section 190.05, subdivision 5a, clause (1); or (ii) federally funded state active service as defined in section 190.05, subdivision 5b, and "active service" includes service performed in accordance with section 190.08, subdivision 3;

(11) to the extent included in federal taxable income, the amount of compensation paid to Minnesota residents who are members of the armed forces of the United States or United Nations for active duty performed under United States Code, title 10; or the authority of the United Nations;

(12) an amount, not to exceed \$10,000, equal to qualified expenses related to a qualified donor's donation, while living, of one or more of the qualified donor's organs to another person for human organ transplantation. For purposes of this clause, "organ" means all or

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part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow; "human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person; "qualified expenses" means unreimbursed expenses for both the individual and the qualified donor for (i) travel, (ii) lodging, and (iii) lost wages net of sick pay, except that such expenses may be subtracted under this clause only once; and "qualified donor" means the individual or the individual's dependent, as defined in section 152 of the Internal Revenue Code. An individual may claim the subtraction in this clause for each instance of organ donation for transplantation during the taxable year in which the qualified expenses occur;

(13) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (8), or 19c, clause (13), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the addition made by the taxpayer under subdivision 19a, clause (8), or 19c, clause (13), in the case of a shareholder of a corporation that is an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. If the net operating loss exceeds the addition for the tax year, a subtraction is not allowed under this clause;

(14) to the extent included in the federal taxable income of a nonresident of Minnesota, compensation paid to a service member as defined in United States Code, title 10, section 101(a)(5), for military service as defined in the Servicemembers Civil Relief Act, Public Law 108-189, section 101(2);

(15) to the extent included in federal taxable income, the amount of national service educational awards received from the National Service Trust under United States Code, title 42, sections 12601 to 12604, for service in an approved Americorps National Service program;

(16) to the extent included in federal taxable income, discharge of indebtedness income resulting from reacquisition of business indebtedness included in federal taxable income under section 108(i) of the Internal Revenue Code. This subtraction applies only to the extent that the income was included in net income in a prior year as a result of the addition under subdivision 19a, clause (13);

(17) the amount of the net operating loss allowed under section 290.095, subdivision 11, paragraph (c);

(18) the amount of expenses not allowed for federal income tax purposes due to claiming the railroad track maintenance credit under section 45G(a) of the Internal Revenue Code;

(19) the amount of the limitation on itemized deductions under section 68(b) of the Internal Revenue Code;

(20) the amount of the phaseout of personal exemptions under section 151(d) of the Internal Revenue Code; and

(21) to the extent included in federal taxable income, the amount of qualified transportation fringe benefits described in section 132(f)(1)(A) and (B) of the Internal Revenue Code. The subtraction is limited to the lesser of the amount of qualified transportation fringe benefits received in excess of the limitations under section 132(f)(2)(A) of the Internal Revenue Code for the year or the difference between the maximum qualified parking benefits excludable under section 132(f)(2)(B) of the Internal Revenue Code minus the amount of transit benefits excludable under section 132(f)(2)(A) of the Internal Revenue Code.

**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, including but not limited to the tax imposed under section 290.0922, 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 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;

(5) the amount of any special deductions taken for federal income tax purposes under sections 241 to 247 and 965 of the Internal Revenue Code;

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

(7) the amount of any capital losses deducted for federal income tax purposes under sections 1211 and 1212 of the Internal Revenue Code;

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

(9) 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;

(10) the amount of a partner's pro rata share of net income which does not flow through to the partner because the partnership elected to pay the tax on the income under section 6242(a)(2) of the Internal Revenue Code;

(11) any increase in subpart F income, as defined in section 952(a) of the Internal Revenue Code, for the taxable year when subpart F income is calculated without regard to the provisions of Division C, title III, section 303(b) of Public Law 110-343;

(12) 80 percent of the depreciation deduction allowed under section 168(k)(1)(A) and (k)(4)(A) of the Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that in the taxable year generates a deduction for depreciation under section 168(k)(1)(A) and (k)(4)(A) and the activity generates a loss for the taxable year that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed under section 168(k)(1)(A) and (k)(4)(A)" for the taxable year is limited to excess of the depreciation claimed by the activity under section 168(k)(1)(A) and (k)(4)(A) over the amount of the loss from the activity that is not allowed in the taxable year. In succeeding taxable years when the losses not allowed in the taxable year are allowed, the depreciation under section 168(k)(1)(A) and (k)(4)(A) is allowed;

(13) 80 percent of the amount by which the deduction allowed by section 179 of the Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal Revenue Code of 1986, as amended through December 31, 2003;

(14) to the extent deducted in computing federal taxable income, the amount of the deduction allowable under section 199 of the Internal Revenue Code;

(15) the amount of expenses disallowed under section 290.10, subdivision 2; and

(16) discharge of indebtedness income resulting from reacquisition of business indebtedness and deferred under section 108(i) of the Internal Revenue Code.

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 work opportunity 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) 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;

(5) 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;

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(6) 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 (8), 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;

(7) 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;

(8) 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 subdivision 19c, clause (1), in a prior taxable year;

(9) 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;

(10) the amount of disability 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;

(11) 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;

(12) 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;

(13) any decrease in subpart F income, as defined in section 952(a) of the Internal Revenue Code, for the taxable year when subpart F income is calculated without regard to the provisions of Division C, title III, section 303(b) of Public Law 110-343;

(14) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19c, clause (12), an amount equal to one-fifth of the delayed depreciation. For purposes of this clause, "delayed depreciation" means the amount of the addition made by the taxpayer under subdivision 19c, clause (12). The resulting delayed depreciation cannot be less than zero;

(15) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19c, clause (13), an amount equal to one-fifth of the amount of the addition;

(16) to the extent included in federal taxable income, discharge of indebtedness income resulting from reacquisition of business indebtedness included in federal taxable income under section 108(i) of the Internal Revenue Code. This subtraction applies only to the extent that the income was included in net income in a prior year as a result of the addition under subdivision 19c, clause (16); and

(17) the amount of expenses not allowed for federal income tax purposes due to claiming the railroad track maintenance credit under section 45G(a) of the Internal Revenue Code.

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 (e) and (f). 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 (i) 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) 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.

(d) 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

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the allowance could have been deducted by the taxpayer under this chapter during the period of the taxpayer's ownership of the property.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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 (i). 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 (e) and (f).

(k) The modifications contained in paragraphs (b) to (i) 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. 19h. Certain preferred stock losses.** A taxpayer must compute net income by treating losses from the sale or transfer of certain preferred stock, which the taxpayer treated as ordinary losses pursuant to Division A, title III, section 301 of Public Law 110-343, as capital losses. The amount of net income under subdivision 19; taxable net income under subdivision 22; taxable income under subdivision 29; the numerator and denominator in section 290.06, subdivision 2c, paragraph (e); individual alternative minimum taxable income under section 290.091, subdivision 2; corporate alternative minimum taxable income under section 290.0921, subdivision 3; and net operating losses under section 290.095 must be computed for each taxable year as if those losses had been treated by the taxpayer as capital losses under the Internal Revenue Code, including the limitations under section 1211 of the Internal Revenue Code.

**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. 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, 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. 29. Taxable income.** The term "taxable income" means:

- (1) for individuals, estates, and trusts, the same as taxable net income;
- (2) for corporations, the taxable net income less
  - (i) the net operating loss deduction under section 290.095;
  - (ii) the dividends received deduction under section 290.21, subdivision 4; and
  - (iii) the exemption for operating in a job opportunity building zone under section 469.317.

**Subd. 29a. State itemized deduction.** "State itemized deduction" means federal itemized deductions, as defined in section 63(d) of the Internal Revenue Code, disregarding any limitation under section 68 of the Internal Revenue Code, and reduced by the amount of the addition required under subdivision 19a, clause (15).

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Subd. 30. **References to 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, 2014. Internal Revenue Code also includes any uncodified provision in federal law that relates to provisions of the Internal Revenue Code that are incorporated into Minnesota law. When used in this chapter, the reference to "subtitle A, chapter 1, subchapter N, part 1, of the Internal Revenue Code" is to the Internal Revenue Code as amended through March 18, 2010.

#### **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;

(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 treated as an "S" corporation under section 290.9725, 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; or

(6) 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 the sole member of a limited liability company that is disregarded for federal income tax purposes, with income allocable to this state under section 290.17, 290.191, or 290.20, as though realized by the individual directly from the source from which it was realized by the limited liability company.

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

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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 treated as an "S" corporation under section 290.9725, 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, 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



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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.

**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 that is located in this state or tangible personal property, including but not limited to mobile property, that is present in this state 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 services are received in this state;

(3) transactions with customers in this state that involve intangible property and result in receipts attributed to this state as provided in section 290.191, subdivision 5 or 6;

(4) leases of tangible personal property that is located in this state as defined in section 290.191, subdivision 5, paragraph (g), or 6, paragraph (e); and

(5) sales and leases of real property located 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 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.

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(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 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, a financial asset securitization 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;

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

(9) any interest in tangible personal property upon which printing will take place located at the premises of a printer that is not a member of a unitary business in this state with which the person has a contract for printing.

(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.

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(B) If the owner of the asset is a member of a unitary business, paragraph (b), clauses (4) to (8), do not apply to an interest acquired from another member of the unitary business. 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) 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 not be taken into account in determining whether such a financial institution is subject to the taxes imposed by this chapter. 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 business.

Subd. 5. **Determination at entity level.** Determinations under this section with respect to trades or businesses conducted by a partnership, trust, estate, or corporation treated as an "S" corporation under section 290.9725, 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.

#### **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.

#### **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.

#### **290.032 LUMP-SUM DISTRIBUTION TAX.**

Subdivision 1. **Imposition.** 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 1401(c)(2) of the Small Business Job Protection Act, Public Law 104-188 and that is subject to tax for such taxable year under section 1401(c)(2) of the Small Business Job Protection Act, Public Law 104-188.

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Subd. 2. **Computation.** The amount of tax imposed by subdivision 1 shall be computed in the same way as the tax imposed under section 402(d) of the Internal Revenue Code of 1986, as amended through December 31, 1995, 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(d) of the Internal Revenue Code of 1986, as amended through December 31, 1995, 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. **Nonapplication.** The tax imposed by this section shall not be applicable to a nonresident individual.

#### **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.

#### **290.05 EXEMPT INDIVIDUALS, ORGANIZATIONS, ESTATES, TRUSTS.**

Subdivision 1. **Exempt entities.** 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 mining, producing, or refining other ores, metals, and minerals, the mining, production, or refining 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; and

(c) any insurance company.

Subd. 2. **Entities taxable unless exempt under Subchapter F of Internal Revenue Code.** 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. **Taxes imposed on exempt entities.** (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:

(1) section 527 (dealing with political organizations);

(2) section 528 (dealing with certain homeowners associations);

(3) sections 511 to 515 (dealing with unrelated business income);

(4) section 521 (dealing with farmers' cooperatives); and

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(5) 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, 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, 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. Notification to commissioner of federal action.** (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. 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 270C.35.

### **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. 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 \$35,480, 5.35 percent;
- (2) On all over \$35,480, but not over \$140,960, 7.05 percent;
- (3) On all over \$140,960, but not over \$250,000, 7.85 percent;
- (4) On all over \$250,000, 9.85 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 \$24,270, 5.35 percent;
- (2) On all over \$24,270, but not over \$79,730, 7.05 percent;
- (3) On all over \$79,730, but not over \$150,000, 7.85 percent;
- (4) On all over \$150,000, 9.85 percent.

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(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 \$29,880, 5.35 percent;
- (2) On all over \$29,880, but not over \$120,070, 7.05 percent;
- (3) On all over \$120,070, but not over \$200,000, 7.85 percent;
- (4) On all over \$200,000, 9.85 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 and increased by the additions required under section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), and (11) to (14), and reduced by the Minnesota assignable portion of the subtraction for United States government interest under section 290.01, subdivision 19b, clause (1), and the subtractions under section 290.01, subdivision 19b, clauses (8), (9), (13), (14), (16), and (17), 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, increased by the amounts specified in section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), and (11) to (14), and reduced by the amounts specified in section 290.01, subdivision 19b, clauses (1), (8), (9), (13), (14), (16), and (17).

**Subd. 2d. Inflation adjustment of brackets.** (a) For taxable years beginning after December 31, 2013, 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, 2012, and before January 1, 2014. 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 "2012" shall be substituted for the word "1992." For 2014, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2012, to the 12 months ending on August 31, 2013, and in each subsequent year, from the 12 months ending on August 31, 2012, 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. 22. Credit for taxes paid to another state.** (a) A taxpayer who is liable for taxes based on net income to another state, 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 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, paragraph (b), and who is subject to income tax as a resident in the state of the individual's domicile is not allowed this credit unless the state of domicile does not allow a similar credit.

(b) For an individual, estate, or trust, the credit is determined by multiplying the tax payable under this chapter by the ratio derived by dividing the income subject to tax in the other state 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.

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(c) If the taxpayer is an athletic team that apportions all of its income under section 290.17, subdivision 5, 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 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 on the gross income earned within the other state 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 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 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. 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 treated as an "S" corporation under section 290.9725, 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 another state. 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 partner of an entity taxed as a partnership under the Internal Revenue Code must be considered to have paid a tax imposed on the partner in an amount equal to the partner's pro rata share of any net income tax paid by the partnership to another state. For purposes of the preceding sentence, the term "net income" tax means any tax imposed on or measured by a partnership's net income.

(i) For the purposes of this subdivision, "another state":

(1) includes:

(i) the District of Columbia; and

(ii) a province or territory of Canada; but

(2) excludes Puerto Rico and the several territories organized by Congress.

(j) The limitations on the credit in paragraphs (b), (c), and (d), are imposed on a state by state basis.

(k) For a tax imposed by a province or territory of Canada, the tax for purposes of this subdivision is the excess of the tax over the amount of the foreign tax credit allowed under section 27 of the Internal Revenue Code. In determining the amount of the foreign tax credit allowed, the net income taxes imposed by Canada on the income are deducted first. Any remaining amount of the allowable foreign tax credit reduces the provincial or territorial tax that qualifies for the credit under this subdivision.

**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 a 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 chair or treasurer of the party unit, 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 campaign finance and public disclosure board upon its request. A claim must be filed with the commissioner no sooner than January 1 of the calendar year in which the contribution was made and no later than April 15 of the calendar year following the calendar year in which the contribution was 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 was made must include interest at the rate specified in section 270C.405.

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

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

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

(3) has designated a principal campaign committee.

This subdivision does not limit the campaign expenditures 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 party" or "minor party" includes the aggregate of that party's 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 candidate as defined in section 10A.01, subdivision 10, 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 campaign finance and public disclosure board by each August 1 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.

(h) For a taxpayer who files a claim for refund via the Internet or other electronic means, the commissioner may accept the number on the official receipt as documentation that a contribution was made rather than the actual receipt as required by paragraph (a).

**Subd. 27. Tax paid to another state; corporations.** (a) A credit is allowed against the tax imposed under subdivision 1 for tax paid to another state based on net income. The credit must be claimed in a manner prescribed by the commissioner.

(b) The amount of the credit equals the amount of qualifying tax paid to the other state for the taxable year, multiplied by the taxpayer's apportionment percentage under section 290.191. If the item of income or gain is assigned to Minnesota as nonbusiness income, the entire amount of the qualifying tax is allowed as a credit. The maximum amount of the credit is limited to the tax liability under subdivision 1 for the taxable year and, in no case, may the credit exceed the reduction in the amount of tax under subdivision 1 if the item of income or gain were excluded from net income.

(c) For purposes of this subdivision, "qualifying tax" means the amount of tax paid to another state on an item of income or gain for the taxable year, if:

(1) the law of another state requires and the taxpayer assigns the entire amount of the income or gain to one other state; and

(2) the income or gain is included in the measure of the exercise of the corporate franchise that is taxable under subdivision 1.

(d) The amount of tax paid to another state on an item of income or gain is the difference between the tax paid to the state and the amount of tax that would have been paid to the state if the item of income or gain had not been included in the net income of that state.

(e) The taxpayer must report to the commissioner of revenue any change in tax in the other state, the change in qualifying tax, and a copy of the final determination of the tax by the taxing authority of the other state. A taxpayer who claims the credit consents to extend the period of limitation for the commissioner to recompute the credit and reassess the tax due, including a refund, for a period of one year following a report by the taxpayer of a final determination of tax by the state in which the entire amount of income or gain is reported, notwithstanding any period of limitations to the contrary, or within any applicable period of limitations, whichever is longer. If a taxpayer fails to report as required by this paragraph, the commissioner may recompute the tax, including a refund, based on the information available to the commissioner. The tax may be recomputed within six years after the report should have been filed, notwithstanding any period of limitations to the contrary.

**Subd. 28. Credit for transit passes.** A taxpayer may take a credit against the tax due under this chapter equal to 30 percent of the expense incurred by the taxpayer to provide transit passes, for use in Minnesota, to employees of the taxpayer. As used in this subdivision, "transit pass"



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has the meaning given in section 132(f)(5)(A) of the Internal Revenue Code. If the taxpayer purchases the transit passes from the transit system operator, and resells them to the employees, the credit is based on the amount of the difference between the price paid for the passes by the employer and the amount charged to employees.

Subd. 29. **Job opportunity building zone job credit.** A taxpayer that is a qualified business, as defined in section 469.310, subdivision 11, is allowed a credit as determined under section 469.318 against the tax imposed by this chapter.

Subd. 33. **Bovine testing credit.** (a) An owner of cattle in Minnesota may take a credit against the tax due under this chapter for an amount equal to: (1) for corporate filers, including shareholders of an S corporation under section 290.9725, 25 percent of the expenses incurred during the taxable year to conduct tuberculosis testing on those cattle; and (2) for all other filers, one-half the expenses incurred during the taxable year to conduct tuberculosis testing on those cattle.

(b) If the amount of credit which the taxpayer is eligible to receive under this subdivision exceeds the taxpayer's tax liability under this chapter, the commissioner of revenue shall refund the excess to the taxpayer.

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

(d) Expenses incurred in a calendar year in which tuberculosis testing of cattle in Minnesota is not federally required are not allowed in claiming the credit under paragraph (a).

Subd. 35. **Seed capital investment credit.** (a) An individual, estate, or trust is allowed a credit against the tax imposed by this chapter for investments in a qualifying business certified under section 116J.8732, subdivision 3. The credit equals 45 percent of the amount invested by the taxpayer in qualified businesses during the taxable year. The credit must not exceed \$112,500 for each taxable year.

(b) A pass-through entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this subdivision and the amount of the credit allowed with respect to a pass-through entity's investment in a qualified business must be determined at the pass-through entity level. The amount of the total credit determined at the pass-through entity level must be allowed to the members in proportion to their respective interests in the pass-through entity.

(c) An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this subdivision if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

(d) The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this subdivision. An investment for which a credit is received under this subdivision must remain in the qualified business for at least three years. Investments placed in escrow do not qualify for the credit.

(e) The entire amount of an investment for which a credit is claimed under this subdivision must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

(f) A taxpayer who owns a controlling interest in the qualified business or who receives more than 50 percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this subdivision. A member of the immediate family of a taxpayer disqualified by this subdivision is not entitled to the credit under this subdivision. For purposes of this subdivision, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

(g) The commissioner may disallow any credit otherwise allowed under this subdivision if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this subdivision or section 116J.8732 or any conditions consistent with those requirements otherwise determined by the commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this subdivision and section 116J.8732. The amount of any credit disallowed by the commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under chapter 289A, must be paid by the taxpayer.

(h) If the amount of the credit under this subdivision for any taxable year exceeds the limitations under paragraph (a), the excess is a credit carryover to each of the four succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried. The amount of the

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unused credit that may be added under this paragraph may not exceed the taxpayer's liability for tax, less the credit for the taxable year. Each year, the aggregate amount of seed capital investment tax credit allowed for investments under this subdivision is limited to allocations that a border city has available for tax reductions in border city enterprise zones under section 469.169. The city must annually notify the commissioner of the amount of its section 469.169 allocations that it wishes to use to provide credits under this paragraph and the commissioner, after verifying the available allocation, shall implement the limit under this paragraph. If investments in qualified businesses reported to the commissioner exceed the limit on credits for investments imposed by this subdivision, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 116J.8732.

Subd. 36. **Greater Minnesota internship credit.** (a) A taxpayer who is an eligible employer may take a credit against the tax due under this chapter equal to the lesser of:

(1) 40 percent of the compensation paid to an intern qualifying under the program established under section 136A.129, but not to exceed \$2,000 per intern; or

(2) the amount certified to the taxpayer by an eligible institution out of the institution's allocation of credits for the calendar year, as provided in section 136A.129.

(b) Credits allowed to a partnership, a limited liability company taxed as a partnership, an S corporation, or multiple owners of property are passed through to the partners, members, shareholders, or owners, respectively, pro rata to each partner, member, shareholder, or owner based on their share of the entity's income for the taxable year.

(c) If the amount of credit which the taxpayer is eligible to receive under this subdivision exceeds the taxpayer's tax liability under this chapter, the commissioner of revenue shall refund the excess to the taxpayer.

(d) An amount necessary to pay claims for refund provided in this subdivision is appropriated from the general fund to the commissioner of revenue.

(e) An amount equal to one percent of the total amount of the credits authorized under section 136A.129, subdivision 4, for an administrative fee for the Office of Higher Education and participating eligible institutions is appropriated from the general fund to the commissioner of revenue, for a transfer to the Office of Higher Education.

(f) For purposes of this subdivision, the terms "eligible employer" and "eligible institution" have the meanings given in section 136A.129.

### **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 a Minnesota family investment program 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 has not attained the age of six years 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 has not attained the age of six years 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 who has not attained the age of one year 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) the amount of the maximum limit for one qualified individual under section 21(c) and (d) of the Internal Revenue Code 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.

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(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.

(e) In the case of a nonresident, part-year resident, or a person who has earned income not subject to tax under this chapter including earned income excluded pursuant to section 290.01, subdivision 19b, clause (9), 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.

(f) For residents of Minnesota, the subtractions for military pay under section 290.01, subdivision 19b, clauses (10) and (11), are not considered "earned income not subject to tax under this chapter."

(g) For residents of Minnesota, the exclusion of combat pay under section 112 of the Internal Revenue Code is not considered "earned income not subject to tax under this chapter."

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 \$18,040, \$720 maximum for one dependent, \$1,440 for all dependents;

income over \$18,040, 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 of 1986, as amended through December 31, 1995;

(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;

(xii) nontaxable scholarship or fellowship grants;

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- (xiii) the amount of deduction allowed under section 199 of the Internal Revenue Code;
- (xiv) the amount of deduction allowed under section 220 or 223 of the Internal Revenue Code;
- (xv) the amount deducted for tuition expenses under section 222 of the Internal Revenue Code; and
- (xvi) the amount deducted for certain expenses of elementary and secondary school teachers under section 62(a)(2)(D) of the Internal Revenue Code.

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) and 102;
- (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;
- (5) child support payments received under a temporary or final decree of dissolution or legal separation; and
- (6) restitution payments received by eligible individuals and excludable interest as defined in section 803 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16.

Subd. 2b. **Inflation adjustment.** The commissioner shall adjust the dollar amount of the income threshold at which the maximum credit begins to be reduced under subdivision 2 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 "1999" shall be substituted for the word "1992." For 2001, the commissioner shall then determine the percent change from the 12 months ending on August 31, 1999, to the 12 months ending on August 31, 2000, and in each subsequent year, from the 12 months ending on August 31, 1999, to the 12 months ending on August 31 of the year preceding the taxable year. The determination of the commissioner pursuant to this subdivision must not be considered a "rule" and is not subject to the Administrative Procedure Act contained in chapter 14. The threshold amount as adjusted must be rounded to the nearest \$10 amount. If the amount ends in \$5, the amount is rounded up to the nearest \$10 amount.

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.

**290.0671 MINNESOTA WORKING FAMILY CREDIT.**

Subdivision 1. **Credit allowed.** (a) An individual who is a resident of Minnesota is allowed a credit against the tax imposed by this chapter equal to a percentage of earned income. To receive a credit, a taxpayer must be eligible for a credit under section 32 of the Internal Revenue Code.

(b) For individuals with no qualifying children, the credit equals 2.10 percent of the first \$6,180 of earned income. The credit is reduced by 2.01 percent of earned income or adjusted gross income, whichever is greater, in excess of \$8,130, but in no case is the credit less than zero.

(c) For individuals with one qualifying child, the credit equals 9.35 percent of the first \$11,120 of earned income. The credit is reduced by 6.02 percent of earned income or adjusted gross income, whichever is greater, in excess of \$21,190, but in no case is the credit less than zero.

(d) For individuals with two or more qualifying children, the credit equals 11 percent of the first \$18,240 of earned income. The credit is reduced by 10.82 percent of earned income or adjusted gross income, whichever is greater, in excess of \$25,130, but in no case is the credit less than zero.

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(e) For a part-year resident, the credit must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

(f) For a person who was a resident for the entire tax year and has earned income not subject to tax under this chapter, including income excluded under section 290.01, subdivision 19b, clause (9), 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. For purposes of this paragraph, the subtractions for military pay under section 290.01, subdivision 19b, clauses (10) and (11), are not considered "earned income not subject to tax under this chapter."

For the purposes of this paragraph, the exclusion of combat pay under section 112 of the Internal Revenue Code is not considered "earned income not subject to tax under this chapter."

(g) For tax years beginning after December 31, 2007, and before December 31, 2010, and for tax years beginning after December 31, 2017, the \$8,130 in paragraph (b), the \$21,190 in paragraph (c), and the \$25,130 in paragraph (d), after being adjusted for inflation under subdivision 7, are each increased by \$3,000 for married taxpayers filing joint returns. For tax years beginning after December 31, 2008, the commissioner shall annually adjust the \$3,000 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 "2007" shall be substituted for the word "1992." For 2009, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2007, to the 12 months ending on August 31, 2008, and in each subsequent year, from the 12 months ending on August 31, 2007, to the 12 months ending on August 31 of the year preceding the taxable year. The earned income thresholds as adjusted for inflation must be rounded to the nearest \$10. If the amount ends in \$5, the amount is rounded up to the nearest \$10. The determination of the commissioner under this subdivision is not a rule under the Administrative Procedure Act.

(h)(1) For tax years beginning after December 31, 2012, and before January 1, 2014, the \$5,770 in paragraph (b), the \$15,080 in paragraph (c), and the \$17,890 in paragraph (d), after being adjusted for inflation under subdivision 7, are increased by \$5,340 for married taxpayers filing joint returns; and (2) for tax years beginning after December 31, 2013, and before January 1, 2018, the \$8,130 in paragraph (b), the \$21,190 in paragraph (c), and the \$25,130 in paragraph (d), after being adjusted for inflation under subdivision 7, are each increased by \$5,000 for married taxpayers filing joint returns. For tax years beginning after December 31, 2010, and before January 1, 2012, and for tax years beginning after December 31, 2013, and before January 1, 2018, the commissioner shall annually adjust the \$5,000 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 "2008" shall be substituted for the word "1992." For 2011, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2008, to the 12 months ending on August 31, 2010, and in each subsequent year, from the 12 months ending on August 31, 2008, to the 12 months ending on August 31 of the year preceding the taxable year. The earned income thresholds as adjusted for inflation must be rounded to the nearest \$10. If the amount ends in \$5, the amount is rounded up to the nearest \$10. The determination of the commissioner under this subdivision is not a rule under the Administrative Procedure Act.

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

Subd. 1a. **Definitions.** For purposes of this section, the terms "qualifying child," and "earned income," have the meanings given in section 32(c) of the Internal Revenue Code, and the term "adjusted gross income" has the meaning given in section 62 of the Internal Revenue Code.

"Earned income of the lesser-earning spouse" has the meaning given in section 290.0675, subdivision 1, paragraph (d).

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

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. This amount includes any amounts

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appropriated to the commissioner of human services from the federal Temporary Assistance for Needy Families (TANF) block grant funds for transfer to the commissioner of revenue.

Subd. 6a. **TANF appropriation for working family credit expansion.** (a) On an annual basis the commissioner of revenue, with the assistance of the commissioner of human services, shall calculate the value of the refundable portion of the Minnesota Working Family Credit provided under this section that qualifies for payment with funds from the federal Temporary Assistance for Needy Families (TANF) block grant. Of this total amount, the commissioner of revenue shall estimate the portion entailed by the expansion of the credit rates provided in Laws 2000, chapter 490, article 4, section 17, for individuals with qualifying children over the rates provided in Laws 1999, chapter 243, article 2, section 12.

(b) An amount sufficient to pay the refunds entailed by the expansion of the credit rates provided in Laws 2000, chapter 490, article 4, section 17, for individuals with qualifying children over the rates provided in Laws 1999, chapter 243, article 2, section 12, as estimated in paragraph (a), is appropriated to the commissioner of human services from the federal Temporary Assistance for Needy Families (TANF) block grant funds, for transfer to the commissioner of revenue for deposit in the general fund.

Subd. 7. **Inflation adjustment.** The earned income amounts used to calculate the credit and the income thresholds at which the maximum credit begins to be reduced in subdivision 1 must be adjusted for inflation. The commissioner shall adjust 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 "2013" shall be substituted for the word "1992." For 2015, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2013, to the 12 months ending on August 31, 2014, and in each subsequent year, from the 12 months ending on August 31, 2013, to the 12 months ending on August 31 of the year preceding the taxable year. The earned income thresholds as adjusted for inflation must be rounded to the nearest \$10 amount. If the amount ends in \$5, the amount is rounded up to the nearest \$10 amount. The determination of the commissioner under this subdivision is not a rule under the Administrative Procedure Act.

#### **290.0672 LONG-TERM CARE INSURANCE CREDIT.**

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

(b) "Long-term care insurance" means a policy that:

(1) qualifies for a deduction under section 213 of the Internal Revenue Code, disregarding the 7.5 percent income test; or meets the requirements given in section 62A.46; or provides similar coverage issued under the laws of another jurisdiction; and

(2) has a lifetime long-term care benefit limit of not less than \$100,000; and

(3) has been offered in compliance with the inflation protection requirements of section 62S.23.

(c) "Qualified beneficiary" means the taxpayer or the taxpayer's spouse.

(d) "Premiums deducted in determining federal taxable income" means the lesser of (1) long-term care insurance premiums that qualify as deductions under section 213 of the Internal Revenue Code; and (2) the total amount deductible for medical care under section 213 of the Internal Revenue Code.

Subd. 2. **Credit.** A taxpayer is allowed a credit against the tax imposed by this chapter for long-term care insurance policy premiums paid during the tax year. The credit for each policy equals 25 percent of premiums paid to the extent not deducted in determining federal taxable income. A taxpayer may claim a credit for only one policy for each qualified beneficiary. A maximum of \$100 applies to each qualified beneficiary. The maximum total credit allowed per year is \$200 for married couples filing joint returns and \$100 for all other filers. For a nonresident or part-year resident, the credit determined under this section must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

#### **290.0674 MINNESOTA EDUCATION CREDIT.**

Subdivision 1. **Credit allowed.** An individual is allowed a credit against the tax imposed by this chapter in an amount equal to 75 percent of the amount paid for education-related expenses for a qualifying child in kindergarten through grade 12. For purposes of this section, "education-related expenses" means:

(1) fees or tuition for instruction by an instructor under section 120A.22, subdivision 10, clause (1), (2), (3), (4), or (5), or a member of the Minnesota Music Teachers Association, and who is not a lineal ancestor or sibling of the dependent for instruction outside the regular school

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day or school year, including tutoring, driver's education offered as part of school curriculum, regardless of whether it is taken from a public or private entity or summer camps, in grade or age appropriate curricula that supplement curricula and instruction available during the regular school year, that assists a dependent to improve knowledge of core curriculum areas or to expand knowledge and skills under the required academic standards under section 120B.021, subdivision 1, and the elective standard under section 120B.022, subdivision 1, clause (2), and that do not include the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship;

(2) expenses for textbooks, including books and other instructional materials and equipment purchased or leased for use 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 extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs;

(3) a maximum expense of \$200 per family for personal computer hardware, excluding single purpose processors, and educational software that assists a dependent to improve knowledge of core curriculum areas or to expand knowledge and skills under the required academic standards under section 120B.021, subdivision 1, and the elective standard under section 120B.022, subdivision 1, clause (2), purchased for use in the taxpayer's home and not used in a trade or business regardless of whether the computer is required by the dependent's school; and

(4) the amount paid to others for transportation of a qualifying child 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 363A.

For purposes of this section, "qualifying child" has the meaning given in section 32(c)(3) of the Internal Revenue Code.

**Subd. 2. Limitations.** (a) For claimants with income not greater than \$33,500, the maximum credit allowed for a family is \$1,000 multiplied by the number of qualifying children in kindergarten through grade 12 in the family. The maximum credit for families with one qualifying child in kindergarten through grade 12 is reduced by \$1 for each \$4 of household income over \$33,500, and the maximum credit for families with two or more qualifying children in kindergarten through grade 12 is reduced by \$2 for each \$4 of household income over \$33,500, but in no case is the credit less than zero.

For purposes of this section "income" has the meaning given in section 290.067, subdivision 2a. In the case of a married claimant, a credit is not allowed unless a joint income tax return is filed.

(b) For a nonresident or part-year resident, the credit determined under subdivision 1 and the maximum credit amount in paragraph (a) must be allocated using the percentage calculated in section 290.06, subdivision 2c, paragraph (e).

**Subd. 4. Credit to be refundable.** If the amount of credit that 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. Appropriation.** An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund.

### **290.0675 MARRIAGE PENALTY CREDIT.**

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

(b) "Earned income" means the sum of the following, to the extent included in Minnesota taxable income:

(1) earned income as defined in section 32(c)(2) of the Internal Revenue Code;

(2) income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and

(3) Social Security benefits as defined in section 86(d)(1) of the Internal Revenue Code.

(c) "Taxable income" means net income as defined in section 290.01, subdivision 19.

(d) "Earned income of lesser-earning spouse" means the earned income of the spouse with the lesser amount of earned income as defined in paragraph (b) for the taxable year minus the sum of (i) the amount for one exemption under section 151(d) of the Internal Revenue Code and (ii) one-half the amount of the standard deduction under section 63(c)(2)(A) and (4) of the Internal

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Revenue Code minus one-half of any addition required under section 290.01, subdivision 19a, clause (17), and one-half of the addition that would have been required under section 290.01, subdivision 19a, clause (17), if the taxpayer had claimed the standard deduction.

Subd. 2. **Credit allowed.** A married couple filing a joint return is allowed a credit against the tax imposed under section 290.06.

Subd. 3. **Credit amount.** The credit amount is the difference between the tax on the couple's joint Minnesota taxable income under the rates and income levels in section 290.06, subdivision 2c, paragraph (a), as adjusted for the taxable year by section 290.06, subdivision 2d, and the sum of the tax under the rates and income levels of section 290.06, subdivision 2c, paragraph (b), as adjusted for the taxable year by section 290.06, subdivision 2d, on the earned income of the lesser-earning spouse, and the tax under the rates and income levels of section 290.06, subdivision 2c, paragraph (b), as adjusted for the taxable year by section 290.06, subdivision 2d, on the couple's joint Minnesota taxable income, minus the earned income of the lesser-earning spouse.

The commissioner of revenue shall prepare and make available to taxpayers a comprehensive table showing the credit under this section at brackets of earnings of the lesser-earning spouse and joint taxable income. The brackets of earnings shall not be more than \$2,000.

Subd. 4. **Nonresidents and part-year residents.** For a nonresident or part-year resident, the credit must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

**290.0677 MILITARY SERVICE CREDITS.**

Subdivision 1. **Credit allowed; current military service.** (a) An individual is allowed a credit against the tax due under this chapter equal to \$59 for each month or portion thereof that the individual was in active military service in a designated area after September 11, 2001, and before January 1, 2009, while a Minnesota domiciliary.

(b) An individual is allowed a credit against the tax due under this chapter equal to \$120 for each month or portion thereof that the individual was in active military service in a designated area after December 31, 2008, while a Minnesota domiciliary.

(c) For active service performed after September 11, 2001, and before December 31, 2006, the individual may claim the credit in the taxable year beginning after December 31, 2005, and before January 1, 2007.

(d) For active service performed after December 31, 2006, the individual may claim the credit for the taxable year in which the active service was performed.

(e) If an individual entitled to the credit died prior to January 1, 2006, the individual's estate or heirs at law, if the individual's probate estate has closed or the estate was not probated, may claim the credit.

Subd. 1a. **Credit allowed; past military service.** (a) A qualified individual is allowed a credit against the tax imposed under this chapter for past military service. The credit equals \$750. The credit allowed under this subdivision is reduced by ten percent of adjusted gross income in excess of \$30,000, but in no case is the credit less than zero.

(b) For a nonresident or a part-year resident, the credit under this subdivision must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

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

(b) "Designated area" means a:

(1) combat zone designated by Executive Order from the President of the United States;

(2) qualified hazardous duty area, designated in Public Law; or

(3) location certified by the U. S. Department of Defense as eligible for combat zone tax benefits due to the location's direct support of military operations.

(c) "Active military service" means active duty service in any of the United States armed forces, the National Guard, or reserves.

(d) "Qualified individual" means an individual who has:

(1) met one of the following criteria:

(i) has served at least 20 years in the military;

(ii) has a service-connected disability rating of 100 percent for a total and permanent disability; or

(iii) has been determined by the military to be eligible for compensation from a pension or other retirement pay from the federal government for service in the military, as computed under United States Code, title 10, sections 1401 to 1414, 1447 to 1455, or 12733; and

(2) separated from military service before the end of the taxable year.



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(e) "Adjusted gross income" has the meaning given in section 61 of the Internal Revenue Code.

Subd. 3. **Credit refundable.** If the amount of credit which the individual is eligible to receive under subdivision 1 exceeds the individual's tax liability under this chapter, the commissioner shall refund the excess to the individual.

Subd. 4. **Appropriation.** An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund.

**290.0679 ASSIGNMENT OF REFUND.**

Subdivision 1. **Definitions.** (a) "Qualifying taxpayer" means a resident who has a child in kindergarten through grade 12 in the current tax year and who met the income requirements under section 290.0674, subdivision 2, for receiving the education credit in the tax year preceding the assignment of the taxpayer's refund.

(b) "Education credit" means the credit allowed under section 290.0674.

(c) "Refund" means an individual income tax refund.

(d) "Financial institution" means a state or federally chartered bank, savings bank, savings association, or credit union.

(e) "Qualifying organization" means a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

(f) "Assignee" means a financial institution or qualifying organization that is entitled to receive payment of a refund assigned under this section.

Subd. 2. **Conditions for assignment.** A qualifying taxpayer may assign all or part of an anticipated refund for the current and future taxable years to a financial institution or a qualifying organization. A financial institution or qualifying organization accepting assignment must pay the amount secured by the assignment to a third-party vendor. The commissioner of education shall, upon request from a third-party vendor, certify that the vendor's products and services qualify for the education credit. A denial of a certification is subject to the contested case procedure under chapter 14. A financial institution or qualifying organization that accepts assignments under this section must verify as part of the assignment documentation that the product or service to be provided by the third-party vendor has been certified by the commissioner of education as qualifying for the education credit. The amount assigned for the current and future taxable years may not exceed the maximum allowable education credit for the current taxable year. Both the taxpayer and spouse must consent to the assignment of a refund from a joint return.

Subd. 3. **Consent for disclosure.** When the taxpayer applies to the financial institution or the qualifying organization for a loan to be secured by the assignment under subdivision 2, the taxpayer must sign a written consent on a form prescribed by the commissioner. The consent must authorize the commissioner to disclose to the financial institution or qualifying organization the total amount of state taxes owed or revenue recapture claims filed under chapter 270A against the taxpayer, and the total amount of outstanding assignments made by the taxpayer under this section. For a refund from a joint return, the consent must also authorize the disclosure of taxes, revenue recapture claims, and assignments relating to the taxpayer's spouse, and must be signed by the spouse. The financial institution or qualifying organization may request that the taxpayer provide a copy of the taxpayer's previous year's income tax return, if any, and may assist the taxpayer in requesting a copy of the previous year's return from the commissioner.

Subd. 4. **Consumer disclosure.** (a) A third-party vendor that receives payment of the amount secured by an assignment must comply with the requirements of this subdivision.

(b) The third-party vendor must disclose to the taxpayer, in plain language:

(1) the cost of each product or service for which the third-party vendor separately charges the taxpayer;

(2) any fees charged to the taxpayer for tax preparation services; and

(3) for qualifying low-income taxpayers, information on the availability of free tax preparation services.

(c) The third-party vendor must provide to the taxpayer executed copies of any documents signed by the taxpayer.

Subd. 5. **Filing of assignment.** The commissioner shall prescribe the form of and manner for filing an assignment of a refund under this section.

Subd. 6. **Effect of assignment.** The taxpayer may not revoke an assignment after it has been filed. The assignee must notify the commissioner if the loan secured by the assignment has been paid in full, in which case the assignment is canceled. An assignment is in effect until the amount assigned is refunded in full to the assignee, or until the assignee cancels the assignment.

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Subd. 7. **Payment of refund.** When a refund assigned under this section is issued by the commissioner, the proceeds of the refund, as defined in subdivision 1, paragraph (c), must be distributed in the following order:

(1) to satisfy any delinquent tax obligations of the taxpayer which are owed to the commissioner;

(2) to claimant agencies to satisfy any revenue recapture claims filed against the taxpayer, in the order of priority of the claims set forth in section 270A.10;

(3) to assignees to satisfy assignments under this section, based on the order in time in which the commissioner received the assignments; and

(4) to the taxpayer.

Subd. 8. **Legal action.** If there is a dispute between the taxpayer and the assignee after the commissioner has remitted the taxpayer's refund to the assignee, the taxpayer's only remedy is to bring an action against the assignee in court to recover the refund. The action must be brought within two years after the commissioner remits the refund to the assignee. The commissioner may not be a party to the proceeding.

Subd. 9. **Assignments private data.** Information regarding assignments under this section is classified as private data on individuals.

**290.068 CREDIT FOR INCREASING RESEARCH ACTIVITIES.**

Subdivision 1. **Credit allowed.** A corporation, partners in a partnership, or shareholders in a corporation treated as an "S" corporation under section 290.9725 are allowed a credit against the tax computed under this chapter for the taxable year equal to:

(a) ten percent of the first \$2,000,000 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 \$2,000,000.

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) The credit for a taxable year beginning before January 1, 2010, and after December 31, 2012, shall not exceed the liability for tax. "Liability for tax" for purposes of this section means the sum of the tax imposed under section 290.06, subdivisions 1 and 2c, for the taxable year reduced by the sum of the nonrefundable credits allowed under this chapter, on all of the entities required to be included on the combined report of the unitary business. If the amount of the credit allowed exceeds the liability for tax of the taxpayer, but is allowed as a result of the liability for tax of other members of the unitary group for the taxable year, the taxpayer must allocate the excess as a research credit to another member of the unitary group.

(b) 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 paragraph (a) 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.

(c) If the amount of the credit determined under this section for any taxable year exceeds the limitation under paragraph (a) or (b), including amounts allocated to other members of the unitary group, 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

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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 and S corporations.** 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.

For shareholders in S corporations the credit must be allocated in the same manner as provided by section 1366(a) 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. 6a. **Credit to be refundable.** If the amount of credit allowed in this section for qualified research expenses incurred in taxable years beginning after December 31, 2009, and before January 1, 2013, exceeds the taxpayer's tax liability under this chapter, the commissioner shall refund the excess amount. The credit allowed for qualified research expenses incurred in taxable years beginning after December 31, 2009, and before January 1, 2013, must be used before any research credit earned under subdivision 3.

Subd. 7. **Appropriation.** An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund.

**290.0681 CREDIT FOR HISTORIC STRUCTURE REHABILITATION.**

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

(b) "Account" means the historic credit administration account in the special revenue fund.

(c) "Office" means the State Historic Preservation Office of the Minnesota Historical Society.

(d) "Project" means rehabilitation of a certified historic structure, as defined in section 47(c)(3)(A) of the Internal Revenue Code, that is located in Minnesota and is allowed a federal credit.

(e) "Society" means the Minnesota Historical Society.

(f) "Federal credit" means the credit allowed under section 47(a)(2) of the Internal Revenue Code.

(g) "Placed in service" has the meaning used in section 47 of the Internal Revenue Code.

(h) "Qualified rehabilitation expenditures" has the meaning given in section 47 of the Internal Revenue Code.

Subd. 2. **Credit or grant allowed; certified historic structure.** (a) A credit is allowed against the tax imposed under this chapter equal to not more than 100 percent of the credit allowed under section 47(a)(2) of the Internal Revenue Code for a project. To qualify for the credit:

(1) the project must receive Part 3 certification and be placed in service during the taxable year; and

(2) the taxpayer must be allowed the federal credit and be issued a credit certificate for the taxable year as provided in subdivision 4.

(b) The society may pay a grant in lieu of the credit. The grant equals 90 percent of the credit that would be allowed for the project.

(c) In lieu of the credit under paragraph (a), an insurance company may claim a credit against the insurance premiums tax imposed under chapter 297I.

Subd. 3. **Applications; allocations.** (a) To qualify for a credit or grant under this section, the developer of a project must apply to the office before the rehabilitation begins. The application must contain the information and be in the form prescribed by the office. The office may collect a fee for application of up to 0.5 percent of qualified rehabilitation expenditures, up to \$40,000, based on estimated qualified rehabilitation expenditures, to offset costs associated with personnel and administrative expenses related to administering the credit and preparing the economic impact report in subdivision 9. Application fees are deposited in the account. The application must indicate if the application is for a credit or a grant in lieu of the credit or a combination of the two and designate the taxpayer qualifying for the credit or the recipient of the grant.

(b) Upon approving an application for credit, the office shall issue allocation certificates that:

(1) verify eligibility for the credit or grant;

(2) state the amount of credit or grant anticipated with the project, with the credit amount equal to 100 percent and the grant amount equal to 90 percent of the federal credit anticipated in the application;

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(3) state that the credit or grant allowed may increase or decrease if the federal credit the project receives at the time it is placed in service is different than the amount anticipated at the time the allocation certificate is issued; and

(4) state the fiscal year in which the credit or grant is allocated, and that the taxpayer or grant recipient is entitled to receive the credit or grant at the time the project is placed in service, provided that date is within three calendar years following the issuance of the allocation certificate.

(c) The office, in consultation with the commissioner, shall determine if the project is eligible for a credit or a grant under this section and must notify the developer in writing of its determination. Eligibility for the credit is subject to review and audit by the commissioner.

(d) The federal credit recapture and repayment requirements under section 50 of the Internal Revenue Code do not apply to the credit allowed under this section.

(e) Any decision of the office under paragraph (c) may be challenged as a contested case under chapter 14. The contested case proceeding must be initiated within 45 days of the date of written notification by the office.

**Subd. 4. Credit certificates; grants.** (a)(1) The developer of a project for which the office has issued an allocation certificate must notify the office when the project is placed in service. Upon verifying that the project has been placed in service, and was allowed a federal credit, the office must issue a credit certificate to the taxpayer designated in the application or must issue a grant to the recipient designated in the application. The credit certificate must state the amount of the credit.

(2) The credit amount equals the federal credit allowed for the project.

(3) The grant amount equals 90 percent of the federal credit allowed for the project.

(b) The recipient of a credit certificate may assign the certificate to another taxpayer, which is then allowed the credit under this section or section 297I.20, subdivision 3. An assignment is not valid unless the assignee notifies the commissioner within 30 days of the date that the assignment is made. The commissioner shall prescribe the forms necessary for notifying the commissioner of the assignment of a credit certificate and for claiming a credit by assignment.

(c) Credits passed through to partners, members, shareholders, or owners pursuant to subdivision 5 are not an assignment of a credit certificate under this subdivision.

(d) A grant agreement between the office and the recipient of a grant may allow the grant to be issued to another individual or entity.

**Subd. 5. Partnerships; multiple owners.** Credits granted to a partnership, a limited liability company taxed as a partnership, S corporation, or multiple owners of property are passed through to the partners, members, shareholders, or owners, respectively, pro rata to each partner, member, shareholder, or owner based on their share of the entity's assets or as specially allocated in their organizational documents or any other executed agreement, as of the last day of the taxable year.

**Subd. 6. Credit refundable.** If the amount of credit that the taxpayer is eligible to receive under this section exceeds the liability for tax under this chapter, the commissioner shall refund the excess to the taxpayer.

**Subd. 7. Appropriations.** (a) An amount sufficient to pay the refunds authorized under this section is appropriated to the commissioner from the general fund.

(b) An amount sufficient to pay the grants authorized under this section is appropriated to the society from the general fund.

(c) Amounts in the account are appropriated to the society for costs associated with personnel and administrative expenses related to administering the credit for historic structure rehabilitation in this section, for refunding application fees under subdivision 3, and for costs associated with preparing the determination of economic impact report required in subdivision 9.

**Subd. 8. Manner of claiming.** (a) The commissioner shall prescribe the manner in which the credit may be issued or claimed. This may include allowing the credit only as a separately processed claim for refund.

(b) The office shall prescribe the manner in which grants are paid.

**Subd. 9. Report; determination of economic impact.** The society must annually determine the economic impact to the state from the rehabilitation of property for which credits or grants are provided under this section and provide a written report on the impact to the chairs and ranking minority members of the legislative committees on taxes of the senate and house of representatives, in compliance with sections 3.195 and 3.197.

**Subd. 10. Sunset.** This section expires after fiscal year 2021, except that the office's authority to issue credit certificates under subdivision 4 based on allocation certificates that were issued before fiscal year 2022 remains in effect through 2024, and the reporting requirements in subdivision 9 remain in effect through the year following the year in which all allocation

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certificates have either been canceled or resulted in issuance of credit certificates, or 2025, whichever is earlier.

#### **290.0692 SMALL BUSINESS INVESTMENT CREDIT.**

Subdivision 1. **Definitions.** For purposes of this section, terms defined in section 116J.8737 have the meaning given in that section.

Subd. 2. **Credit allowed.** A qualified investor is allowed a credit against the tax imposed under this chapter for qualified investments made in a qualified small business for the taxable year. The credit equals the amount and applies to the taxable year indicated on the certificate provided to the qualified investor under section 116J.8737, but the maximum credit in any taxable year is \$250,000 for a married couple filing a joint return, and \$125,000 for all other claimants.

Subd. 3. **Proportional credits.** Each pass-through entity must provide each investor a statement indicating the investor's share of the credit amount certified to the pass-through entity based on its share of the pass-through entity's capital assets at the time of the qualified investment.

Subd. 4. **Credit refundable.** If the amount of the credit under this section for any taxable year exceeds the claimant's liability for tax under this chapter, the commissioner shall refund the excess to the claimant. An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund.

Subd. 5. **Audit powers.** Notwithstanding the certification eligibility issued by the commissioner of employment and economic development under section 116J.8737, the commissioner may utilize any audit and examination powers under chapter 270C or 289A to the extent necessary to verify that the taxpayer is eligible for the credit and to assess for the amount of any improperly claimed credit.

#### **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, 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 290.17, subdivision 4, when members of the group use different accounting periods for federal income tax purposes.

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.

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

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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. 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.

**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.

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

Subd. 2. **Subtraction.** (a) A qualified individual is allowed a subtraction from federal taxable income of the individual's subtraction base 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 (4), 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.

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.

**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.

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(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 paragraph (a) shall not apply. As long as the provisions of paragraph (a) apply between Minnesota and Wisconsin, the provisions of paragraph (a) shall apply to any individual who is domiciled in Wisconsin.

(c) For the purposes of paragraph (a), whenever the Wisconsin tax on Minnesota residents which would have been paid Wisconsin without paragraph (a) exceeds the Minnesota tax on Wisconsin residents which would have been paid Minnesota without paragraph (a), or vice versa, then the state with the net revenue loss resulting from paragraph (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.

(d)(1) Interest is payable on all amounts calculated under paragraph (c) relating to taxable years beginning after December 31, 2000. Interest accrues from July 1 of the taxable year.

(2) The commissioner of revenue is authorized to enter into agreements with the state of Wisconsin specifying the reciprocity payment due dates, conditions constituting delinquency, interest rates, and a method for computing interest due.

(3) For agreements entered into before October 1, 2014, the annual compensation required under paragraph (c) must equal at least the net revenue loss minus \$1,000,000 per fiscal year.

(4) For agreements entered into after September 30, 2014, the annual compensation required under paragraph (c) must equal the net revenue loss per fiscal year.

(5) For the purposes of clauses (3) and (4), "net revenue loss" means the difference between the amount of Minnesota income taxes Minnesota forgoes by not taxing Wisconsin residents on income subject to reciprocity and the credit Minnesota would have been required to give under section 290.06, subdivision 22, to Minnesota residents working in Wisconsin had there not been reciprocity.

(e) 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.

(f) 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.

**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 6.75 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:

(i) the charitable contribution deduction under section 170 of the Internal Revenue Code;

(ii) the medical expense deduction;

(iii) the casualty, theft, and disaster loss deduction; and

(iv) the impairment-related work expenses of a disabled person;

(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

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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); and

(6) the amount of addition required by section 290.01, subdivision 19a, clauses (7) to (9), and (11) to (14);

less the sum of the amounts determined under the following:

(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;

(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;

(4) amounts subtracted from federal taxable income as provided by section 290.01, subdivision 19b, clauses (6), (8) to (14), (16), and (21); and

(5) the amount of the net operating loss allowed under section 290.095, subdivision 11, paragraph (c).

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

(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) "Tentative minimum tax" equals 6.75 percent of alternative minimum taxable income after subtracting the exemption amount determined under subdivision 3.

**Subd. 3. Exemption amount.** (a) For purposes of computing the alternative minimum tax, the exemption amount is, for taxable years beginning after December 31, 2005, \$60,000 for married couples filing joint returns, \$30,000 for married individuals filing separate returns, estates, and trusts, and \$45,000 for unmarried individuals.

(b) The exemption amount determined under this subdivision is subject to the phase out under section 55(d)(3) of the Internal Revenue Code, except that alternative minimum taxable income as determined under this section must be substituted in the computation of the phase out.

(c) For taxable years beginning after December 31, 2006, the exemption amount under paragraph (a), clause (2), must be adjusted for inflation. The commissioner shall adjust the exemption amount 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 "2005" shall be substituted for the word "1992." For 2007, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2005, to the 12 months ending on August 31, 2006, and in each subsequent year, from the 12 months ending on August 31, 2005, to the 12 months ending on August 31 of the year preceding the taxable year. The exemption amount as adjusted must be rounded to the nearest \$10. If the amount ends in \$5, it must be rounded up to the nearest \$10 amount. The determination of the commissioner under this subdivision is not a rule under the Administrative Procedure Act.

**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.



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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) 6.75 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 allowed in computing alternative minimum taxable income provided in subdivision 2, paragraph (a), clause (2) of the first series of clauses and clauses (1), (2), and (3) of the second series of clauses, 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).

**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; 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; 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:

(1) a deduction for dividends paid to or received from a corporation which is subject to tax under section 290.36 and which is a member of an affiliated group of corporations as defined by the Internal Revenue Code; or

(2) a deduction for dividends received from a property and casualty insurer as defined under section 60A.60, subdivision 8, which is a member of an affiliated group of corporations as defined by the Internal Revenue Code and either: (i) the dividend is eliminated in consolidation under Treasury Regulation 1.1502-14(a), as amended through December 31, 1989; or (ii) the dividend is deducted under an election under section 243(b) of 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.

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(1) The portion of the depreciation deduction allowed for federal income tax purposes under section 168(k) of the Internal Revenue Code that is required as an addition under section 290.01, subdivision 19c, clause (12), is disallowed in determining alternative minimum taxable income.

(2) The subtraction for depreciation allowed under section 290.01, subdivision 19d, clause (14), is allowed as a depreciation deduction in determining alternative minimum taxable income.

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

(4) The special rule for certain dividends under section 56(g)(4)(C)(ii) of the Internal Revenue Code 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 tax exempt interest under section 57(a)(5) of the Internal Revenue Code does not apply.

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

(8) 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.

(9) 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), or (ii) the amount of refunds of income, excise, or franchise taxes subtracted as provided in section 290.01, subdivision 19d, clause (8).

(10) Alternative minimum taxable income excludes the income from operating in a job opportunity building zone as provided under section 469.317.

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 297I.05, subdivisions 1 to 5;

(3) real estate investment trusts;

(4) regulated investment companies or a fund thereof;

(5) entities having a valid election in effect under section 860D(b) of the Internal Revenue Code; and

(6) small corporations exempt from the federal alternative minimum tax under section 55(e) 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.

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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:

(1) dividends paid to or received from a corporation which is subject to tax under section 290.36 and which is a member of an affiliated group of corporations as defined by the Internal Revenue Code; or

(2) dividends received from a property and casualty insurer as defined under section 60A.60, subdivision 8, which is a member of an affiliated group of corporations as defined by the Internal Revenue Code and either: (i) the dividend is eliminated in consolidation under Treasury Regulation 1.1502-14(a), as amended through December 31, 1989; or (ii) the dividend is deducted under an election under section 243(b) of the Internal Revenue Code.

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.

**290.0922 MINIMUM FEE; CORPORATIONS; PARTNERSHIPS.**

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 treated as an "S" corporation under section 290.9725 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	\$	930,000	\$ 0
\$ 930,000 to	\$	1,869,999	\$ 190
\$ 1,870,000 to	\$	9,339,999	\$ 560
\$ 9,340,000 to	\$	18,679,999	\$ 1,870
\$ 18,680,000 to	\$	37,359,999	\$ 3,740
\$ 37,360,000 or more			\$ 9,340

(b) A tax is imposed for each taxable year on a corporation required to file a return under section 289A.12, subdivision 3, that is treated as an "S" corporation under section 290.9725 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:

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

	the tax equals:
less than \$ 930,000	\$ 0
\$ 930,000 to \$ 1,869,999	\$ 190
\$ 1,870,000 to \$ 9,339,999	\$ 560
\$ 9,340,000 to \$ 18,679,999	\$ 1,870
\$ 18,680,000 to \$ 37,359,999	\$ 3,740
\$ 37,360,000 or more	\$ 9,340

(c) The commissioner shall adjust the dollar amounts of both the tax and the property, payrolls, and sales or receipts thresholds in paragraphs (a) and (b) 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 "2012" must be substituted for the word "1992." For 2014, the commissioner shall determine the percentage change from the 12 months ending on August 31, 2012, to the 12 months ending on August 31, 2013, and in each subsequent year, from the 12 months ending on August 31, 2012, to the 12 months ending on August 31 of the year preceding the taxable year. The determination of the commissioner pursuant to this subdivision is not a "rule" subject to the Administrative Procedure Act contained in chapter 14. The tax amounts as adjusted must be rounded to the nearest \$10 amount and the threshold amounts must be adjusted to the nearest \$10,000 amount. For tax amounts that end in \$5, the amount is rounded up to the nearest \$10 amount and for the threshold amounts that end in \$5,000, the amount is rounded up to the nearest \$10,000.

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

- (1) corporations exempt from tax under section 290.05;
- (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;
- (6) cooperatives organized under chapter 308A or 308B that provide housing exclusively to persons age 55 and over and are classified as homesteads under section 273.124, subdivision 3; and
- (7) a qualified business as defined under section 469.310, subdivision 11, if for the taxable year all of its property is located in a job opportunity building zone designated under section 469.314 and all of its payroll is a job opportunity building zone payroll under section 469.310.

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

Subd. 3. **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, any other tangible property located in Minnesota, but does not include the property of a qualified business as defined under section 469.310, subdivision 11, that is located in a job opportunity building zone designated under section 469.314. 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, but does not include the job opportunity building zone payroll under section 469.310, subdivision 8, of a qualified business as defined under section 469.310, subdivision 11. Taxpayers who do not utilize payrolls to apportion income shall nevertheless include Minnesota payrolls for purposes of this section.

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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.

**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 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 for a corporation not engaged in the business of issuing life insurance contracts.

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.

**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 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(g) of the Internal Revenue Code, the deduction provided by this section shall not be allowed.

Subd. 2. **Defined and limited.** (a) The term "net operating loss" as used in this section shall mean a net operating loss as defined in section 172(c) of the Internal Revenue Code, with the modifications specified in subdivision 4. The deductions provided in section 290.21 cannot be used in the determination of a net operating loss.

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

Subd. 3. **Carryover.** (a) A net operating loss incurred during the taxable year shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss.

(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 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) 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. The limitation amount determined under section 382 shall be applied to net income, before apportionment, in each post change year to which a loss is carried.

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.

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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. 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. 11. **Carryback or carryover adjustments.** (a) Except as provided in paragraph (c), 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.

(c) This paragraph does not apply to eligible small businesses that make a valid election to carry back their losses for federal purposes under section 172(b)(1)(H) of the Internal Revenue Code as amended through March 31, 2009.

(1) A net operating loss of an individual, estate, or trust that is allowed under this subdivision and for which the taxpayer elects to carry back for more than two years under section 172(b)(1)(H) of the Internal Revenue Code is a net operating loss carryback to each of the two taxable years preceding the loss, and unused portions may be carried forward for 20 taxable years after the loss.

(2) The entire amount of the net operating loss for any taxable year must be carried to the earliest of the taxable years to which the loss may be carried. The portion of the loss which may be carried to each of the other taxable years is the excess, if any, of the amount of the loss over the greater of the taxable net income or alternative minimum taxable income for each of the taxable years to which the loss may be carried.

**290.10 NONDEDUCTIBLE ITEMS.**

Subdivision 1. **Expenses, interest, and taxes.** In computing the net income of a taxpayer 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 subdivision.

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Subd. 2. **Fines, fees, and penalties.** (a) Except as provided in this subdivision, no deduction from taxable income for a trade or business expense under section 162(a) of the Internal Revenue Code shall be allowed for any amount paid or incurred, whether by suit, agreement, or otherwise, to, or at the direction of, a government or entity described in paragraph (d) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

(b) Exception for amounts constituting restitution or paid to come into compliance with the law. Paragraph (a) does not apply to any amount which:

(1) the taxpayer establishes:

(i) constitutes restitution, including remediation of property for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law; or

(ii) is paid to come into compliance with any law which was violated or involved in the investigation or inquiry; and

(2) is identified as restitution or as an amount paid to come into compliance with the law, as the case may be, in the court order or settlement agreement.

This paragraph does not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

(c) Paragraph (a) does not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (d) is a party.

(d) An entity is described in this paragraph if it is:

(1) a nongovernmental entity which exercises self-regulatory powers, including imposing sanctions, in connection with a qualified board or exchange, as defined in section 1256(g)(7) of the Internal Revenue Code, or;

(2) to the extent provided in federal regulations, a nongovernmental entity which exercises self-regulatory powers, including imposing sanctions, as part of performing an essential governmental function.

(e) Paragraph (a) does not apply to any amount paid or incurred as taxes due.

### **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 treated as "S" corporations under section 290.9725, 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, or 290.36. Deductions definitely related to any item of gross income assigned under subdivision 2, paragraph (e), 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. 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 wages as defined in section 3401(a) and (f) of the Internal Revenue Code is assigned to this state if, and to the extent that, the work of the employee is 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:

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(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. For purposes of this paragraph, off-season training activities, unless conducted at the team's facilities as part of a team imposed program, are not included in the total number of duty days. Bonuses earned as a result of play during the regular season or for participation in championship, play-off, or all-star games must be allocated under the formula. Signing bonuses are not subject to allocation under the formula if they are not conditional on playing any games for the team, are payable separately from any other compensation, and are nonrefundable; 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 as "retirement income" as defined in section (b)(1) of the State Income Taxation of Pension Income Act, Public Law 104-95, are not considered income derived from carrying on a trade or business or from wages or other compensation for work an employee performed 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 an interest in a single member limited liability company that is disregarded for federal income tax purposes is allocable to this state as if the single member limited liability company did not exist and the assets of the limited liability company are personally owned by the sole member.

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.

When an employer pays an employee for a covenant not to compete, the income allocated to this state is in the ratio of the employee's service in Minnesota in the calendar year preceding leaving the employment of the employer over the total services performed by the employee for the employer in that year.

(d) Income from winnings on a bet made by an individual while in Minnesota is assigned to this state. In this paragraph, "bet" has the meaning given in section 609.75, subdivision 2, as limited by section 609.75, subdivision 3, clauses (1), (2), and (3).

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

(f) For the purposes of this section, working as an employee shall not be considered to be conducting a trade or business.

**Subd. 3. Trade or business income; general rule.** All income of a trade or business is subject to apportionment except nonbusiness income. 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.



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(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 within 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 business income subject to subdivision 5, income of an insurance company, or income of an investment company determined under section 290.36.

(b) The term "unitary business" means business activities or operations which result in a flow of value between them. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a sole proprietorship, 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. Unity is also presumed when business activities or operations are of mutual benefit, dependent upon or contributory to one another, either individually or as a group.

(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 does not exist when two or more corporations are involved unless more than 50 percent of the voting stock of each corporation 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. For this purpose, the term "voting stock" shall include membership interests of mutual insurance holding companies formed under section 66A.40.

(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; except that the income and apportionment factors of a foreign entity, other than an entity treated as a C corporation for federal income tax purposes, that are included in the federal taxable income, as defined in section 63 of the Internal Revenue Code as amended through the date named in section 290.01, subdivision 19, of a domestic corporation, domestic entity, or individual must be included in determining net income and the factors to be used in the apportionment of net income pursuant to section 290.191 or 290.20. A foreign corporation or other foreign entity which is not included on a combined report and which is required to file a return under this chapter shall file on a separate return basis.

(g) 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 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; except that the income and apportionment factors of a foreign entity, other than an entity treated as a C corporation for federal income tax purposes, that is included in the federal taxable income, as defined in section 63 of the Internal Revenue Code as amended through the date named in section 290.01, subdivision 19, of a domestic corporation, domestic entity, or individual must be included in determining net income and the factors to be used in the apportionment of net income pursuant to section 290.191 or 290.20.

(h) Each corporation or other entity, except a sole proprietorship, 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 (g) 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 (g) in the denominators of the apportionment formula. Except as otherwise provided by paragraph (f), all sales of the unitary

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business made within this state pursuant to section 290.191 or 290.20 must be included on the combined report of a corporation or other entity that is a member of the unitary business and is subject to the jurisdiction of this state to impose tax under this chapter.

(i) 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.** Nonbusiness income is income of the trade or business that cannot be apportioned by this state because of the United States Constitution or the Constitution of the state of Minnesota and includes income that cannot constitutionally be apportioned to this state because it is derived from a capital transaction that solely serves an investment function. Nonbusiness income must be allocated under subdivision 2.

**290.172 COMMISSIONER OF REVENUE.**

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

**290.191 APPORTIONMENT OF NET INCOME.**

Subdivision 1. **General rule.** (a) 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.

(b) For purposes of this section, "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States or any foreign country.

Subd. 2. **Apportionment formula of general application.** (a) Except for those trades or businesses required to use a different formula under subdivision 3 or section 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) the percent for the sales factor under paragraph (b) 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) the percent for the property factor under paragraph (b) 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) the percent for the payroll factor under paragraph (b) 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.

(b) For purposes of paragraph (a) and subdivision 3, the following percentages apply for the taxable years specified:

Taxable years beginning during calendar year	Sales factor percent	Property factor percent	Payroll factor percent
2007	78	11	11
2008	81	9.5	9.5
2009	84	8	8
2010	87	6.5	6.5
2011	90	5	5
2012	93	3.5	3.5

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2013	96	2	2
2014 and later calendar years	100	0	0

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) the percent for the sales factor under subdivision 2, paragraph (b), 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) the percent for the property factor under subdivision 2, paragraph (b), 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) the percent for the payroll factor under subdivision 2, paragraph (b), 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. 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; and
- (5) sales of debt instruments as defined in section 1275(a)(1) of the Internal Revenue Code or sales of stock.

(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, 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. Receipts from the lease or rental of moving property including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent of the use of moving property is determined as follows:

- (1) A motor vehicle is used wholly in the state in which it is registered.
- (2) The extent that rolling stock is used in this state is determined by multiplying the receipts from the lease or rental of the rolling stock by a fraction, the numerator of which is the miles traveled within this state by the leased or rented rolling stock and the denominator of which is the total miles traveled by the leased or rented rolling stock.

(3) The extent that an aircraft is used in this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of

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landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(4) The extent that a vessel, mobile equipment, or other mobile property is used in the state is determined by multiplying the receipts from the lease or rental of the property by a fraction, the numerator of which is the number of days during the taxable year the property was in this state and the denominator of which is the total days in the taxable year.

(h) Royalties and other income 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 where the services are received. For the purposes of this section, receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where it has a fixed place of doing business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of doing business, the services shall be deemed to be received 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 services shall be deemed to be received at the office of the customer to which the services are billed.

(k) For the purposes of this subdivision and subdivision 6, paragraph (l), receipts from management, distribution, or administrative services performed by a corporation or trust for a fund of a corporation or trust regulated under United States Code, title 15, sections 80a-1 through 80a-64, must be attributed to the state where the shareholder of the fund resides. Under this paragraph, receipts for services attributed to shareholders are determined on the basis of the ratio of: (1) the average of the outstanding shares in the fund owned by shareholders residing within Minnesota at the beginning and end of each year; and (2) the average of the total number of outstanding shares in the fund at the beginning and end of each year. Residence of the shareholder, in the case of an individual, is determined by the mailing address furnished by the shareholder to the fund. Residence of the shareholder, when the shares are held by an insurance company as a depositor for the insurance company policyholders, is the mailing address of the policyholders. In the case of an insurance company holding the shares as a depositor for the insurance company policyholders, if the mailing address of the policyholders cannot be determined by the taxpayer, the receipts must be excluded from both the numerator and denominator. Residence of other shareholders is the mailing address of the shareholder.

**Subd. 6. Determination of receipts factor for financial institutions.** (a) For purposes of this section, the rules in this subdivision and subdivisions 5, paragraph (k), 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, bonds, 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.

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(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. Receipts from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent of the use of moving property is determined as follows:

(1) A motor vehicle is used wholly in the state in which it is registered.

(2) The extent that rolling stock is used in this state is determined by multiplying the receipts from the lease or rental of the rolling stock by a fraction, the numerator of which is the miles traveled within this state by the leased or rented rolling stock and the denominator of which is the total miles traveled by the leased or rented rolling stock.

(3) The extent that an aircraft is used in this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(4) The extent that a vessel, mobile equipment, or other mobile property is used in the state is determined by multiplying the receipts from the lease or rental of property by a fraction, the numerator of which is the number of days during the taxable year the property was in this state and the denominator of which is the total days in the taxable year.

(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 services are received. For the purposes of this section, services provided to a corporation, partnership, or trust must be attributed to a state where it has a fixed place of doing business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust does not have a fixed place of doing business, the services shall be deemed to be received 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 services shall be deemed to be received 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

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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. 8. Deposit; definition.** (a) "Deposit," as used in subdivision 6, paragraph (n), 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.

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(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.

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(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.

#### **290.20 NET INCOME; ALLOCATION TO STATE.**

Subdivision 1. **Statutory methods to determine; petition for use of other methods.** 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. **Petition form.** A petition within the meaning of this section must be filed by the taxpayer in the form required by the commissioner.

Subd. 2. **Nonapplication of statutory methods.** 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.

#### **290.21 DEDUCTIONS ALLOWED TO CORPORATIONS.**

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

Subd. 4. **Dividends received from another corporation.** (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;

(ii) the remaining 20 percent of dividends if the dividends are received from a corporation which is subject to tax under section 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; or

(iii) the remaining 20 percent of the dividends if the dividends are received from a property and casualty insurer as defined under section 60A.60, subdivision 8, which is a member of an affiliated group of corporations as defined by the Internal Revenue Code and either: (A) the dividend is eliminated in consolidation under Treasury Regulation 1.1502-14(a), as amended through December 31, 1989; or (B) the dividend 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



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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 does not apply to a dividend received from a real estate investment trust as defined in section 856 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 86-272 are included as income on the return of an affiliated corporation permitted or required to file a combined report under section 290.17, subdivision 4, or 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.

#### **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.

#### **290.26 EXEMPTION FOR INDIVIDUAL RETIREMENT ACCOUNT.**

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.

#### **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.

#### **290.30 FIDUCIARIES, DUTY TO PAY TAX.**

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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 270C.58, subdivision 1, 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.

#### **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. 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.

#### **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.

#### **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

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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.

#### **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.

#### **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.

#### **290.371 NOTICE OF BUSINESS ACTIVITIES REPORT.**

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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. **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;

or

(4) the corporation's activities in Minnesota, or the interests in property which it owns, consist solely of activities or property exempted from jurisdiction to tax under section 290.015, subdivision 3, paragraph (b).

Subd. 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.

### **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 in the Department of Natural Resources. All interest earned on money accrued, gifts to the program, contributions to the program, and reimbursements of expenditures in the nongame wildlife management account shall be credited to the account by the commissioner of management and budget, except that gifts or contributions received directly by the commissioner of natural resources and directed by the contributor for use in specific nongame field projects or geographic areas shall be handled according to section 84.085, subdivision 1.

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. The commissioner may use

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funds appropriated for nongame wildlife programs for the purpose of developing, preserving, restoring, and maintaining wintering habitat for neotropical migrant birds in Latin America and the Caribbean under agreement or contract with any nonprofit organization dedicated to the construction, maintenance, and repair of such projects that are acceptable to the governmental agency having jurisdiction over the land and water affected by the projects. Under this authority, the commissioner may execute agreements and contracts if the commissioner determines that the use of the funds will benefit neotropical migrant birds that breed in or migrate through the state.

#### **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 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, gifts to the program, contributions to the program, and reimbursements of expenditures in the nongame wildlife management account shall be credited to the account by the commissioner of management and budget, except that gifts or contributions received directly by the commissioner of natural resources and directed by the contributor for use in specific nongame field projects or geographic areas shall be handled according to section 84.085, subdivision 1.

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.

#### **290.48 LARGE AMOUNTS OF CASH; PRESUMPTION OF JEOPARDY.**

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 section 270C.36, 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.

#### **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

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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.

**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.

**290.92 TAX WITHHELD AT SOURCE UPON WAGES; OTHER PAYMENTS.**

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.

(2) Payroll period. For purposes of this section the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by the employee's employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(3) Employee. For purposes of this section the term "employee" means any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, and every nonresident individual performing services within the state of Minnesota, the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation, and an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(4) Employer. For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, 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 control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having 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 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. 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

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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. 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

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(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, except that if supplemental wages are not paid concurrent with a payroll period the employer shall withhold tax on the supplemental payment at the rate of 6.25 percent as if no exemption had been claimed.

**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;



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(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; or

(5) the partnership is a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code.

(e) For purposes of sections 270C.60, 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 270C.63 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 270C.67, 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 sections 270C.60, 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.** (a) 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:

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

(2) 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

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

(b) Copies of exemption certificates and affidavits of residency required to be submitted by paragraph (a) 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.

(c) An employer who submits a copy of a withholding exemption certificate in accordance with paragraph (a) 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 paragraph (d).

(d) 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.

(e) The commissioner's determination under paragraph (d) 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. 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. 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

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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. 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. 19. **Employees incurring no income tax liability.** (a) Notwithstanding any other provision of this section, except the provisions of subdivision 5a, an employer is not required to deduct and withhold any tax under this chapter from wages paid to an employee if:

- (1) the employee furnished the employer with a withholding exemption certificate that:
  - (i) certifies the employee incurred no liability for income tax imposed under this chapter for the employee's preceding taxable year;
  - (ii) certifies the employee anticipates incurring no liability for income tax imposed under this chapter for the current taxable year; and
  - (iii) is in a form and contains any other information prescribed by the commissioner; or
- (2)(i) the employee is not a resident of Minnesota when the wages were paid; and
- (ii) the employer reasonably expects that the employer will not pay the employee enough wages assignable to Minnesota under section 290.17, subdivision 2, paragraph (a)(1), to meet the nonresident requirement to file a Minnesota individual income tax return for the taxable year under section 289A.08, subdivision 1, paragraph (a).

(b) 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) 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:

- (1) is paid to an employee pursuant to a plan to which the employer is a party, and
- (2) 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.

(b) 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.

(c) 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 unemployment benefits claimants.** At the time an individual makes a claim for unemployment benefits, the commissioner of employment and economic development must notify the individual that the individual's unemployment benefits may be subject to state income taxes depending on the individual's other income.

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 date the employer is required to withhold Minnesota taxes under this section. 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

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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 be a trust, or by a person authorized to sign the application if the employer or payor is a corporation.

No fee shall be charged for the application.

The account number is not assignable.

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, (2) the payee is subject to federal backup withholding on the reportable payment under section 3406 of the Internal Revenue Code, or (3) 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 paragraph (a), clause (1), paragraph (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 paragraph (a), clause (3), paragraph (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 clause apply with respect to the payee, paragraph (a), clause (1), shall also apply to any reportable payment made after the close of the period described in clause (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 clause with respect to the payee, paragraph (a) shall also apply to any reportable payment made during the 30-day period described in clause (2).

(iii) The payor may elect a period shorter than the grace period set forth in item (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

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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. **Payments to horse racing license holders.** 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 6.25 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 subdivision 4a and section 290.17, subdivision 2(1)(b)(ii).

Subd. 29. **Lottery prizes.** 7.25 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.

Subd. 30. **Registration; third-party bulk filer.** (a) For purposes of this subdivision, the following terms have the meanings given:

(1) Notwithstanding section 290.01, "person" means an individual, fiduciary, partnership, corporation, limited liability company, association, or other entity organized under the laws of this state or any other jurisdiction.

(2) "Third-party bulk filer" means a person who has custody or control over another employer's funds for the purpose of filing returns and depositing the withheld taxes of the other employer with the commissioner.

(b) A person shall not act as a third-party bulk filer unless the person is registered with the commissioner under this subdivision.

(c) A person may apply to the commissioner, on a form prescribed by the commissioner, for registration as a third-party bulk filer under this subdivision, and the commissioner shall grant the application if the application indicates that the person will comply with this subdivision.

(d) A third-party bulk filer must:

(1) keep client funds held for payment of federal or state withholding taxes or other client obligations in an account separate from the third-party bulk filer's own funds;

(2) permit the commissioner to conduct scheduled or unscheduled audits of the third-party bulk filer's books and records relating to compliance with this subdivision and fully cooperate with the audits or, at the discretion of the commissioner, submit an audit conducted by a certified public accountant;

(3) file returns electronically and make deposits electronically with the commissioner in compliance with the commissioner's requirements for electronic filing and depositing;

(4) provide to the commissioner at least monthly, in the form requested by the commissioner, an updated client list that includes at least the name, address, tax identification number, and federal deposit frequency of each client. The address listed for the client must be the client's actual street or post office box address and not the third-party bulk filer's address;

(5) disclose in writing to prospective clients that:

(i) the third-party bulk filer may invest client funds prior to depositing them with the commissioner and with the Internal Revenue Service and that earnings from those investments will be the property of the third-party bulk filer;

(ii) if the third-party bulk filer incurs losses on those investments or uses the client's funds for other purposes, the third-party bulk filer will still be liable to the client for the amounts withheld but will be able to make required tax deposits on behalf of the client only by using the

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third-party bulk filer's own funds or other assets to replace the funds lost through the investments or used for other purposes; and

(iii) no state or federal agency monitors or assumes any responsibility for the financial solvency of third-party bulk filers;

(6) timely file all returns and timely make all tax deposits required under its contracts with its clients;

(7) upon request, provide to the commissioner, within the time specified in the request, a copy of any contract with a client; and

(8) comply with all other requirements of this section or of rules adopted under this section.

(e) When the commissioner sends an order of assessment issued under section 270C.33, in either paper or electronic form, to a third-party bulk filer regarding a client, the commissioner shall also send a paper copy of the order of assessment to the client.

(f) If the commissioner determines that a required deposit appears not to have been made, the commissioner shall send a written notice of the delinquency, in electronic or paper form, to the third-party bulk filer, and a copy to the client as required under paragraph (e).

(g) If the commissioner determines that a required deposit has not been made, and that continued operation of the third-party bulk filer would present a risk of loss to its clients, the commissioner may, upon ten business days' written notice by certified mail to the third-party bulk filer, suspend the registration of the third-party bulk filer for an indefinite period, and notify the third-party bulk filer's clients that the registration has been suspended. A registration may not be suspended if the failure to make a deposit was caused by the client's failure to deposit funds or provide the information necessary to calculate appropriate tax withholding payments. The commissioner shall, upon request, provide the third-party bulk filer with the opportunity for an administrative appeal under section 270C.35, subdivisions 1, 4, and 10, prior to suspension; the hearing, if any, on the administrative appeal must occur within the ten-day period unless the commissioner, in the commissioner's sole discretion, agrees to delay the suspension to permit a later hearing. The 60-day period specified in section 270C.35, subdivision 4, does not apply to a proceeding under this paragraph. Within 30 days after the beginning of a suspension under this paragraph, the commissioner may commence a proceeding to suspend or revoke under paragraph (h); if the commissioner fails to do so, the suspension under this paragraph terminates.

(h) If the commissioner determines, in compliance with paragraph (i), that a third-party bulk filer has violated this section without reasonable cause or is no longer eligible for registration under this subdivision, the commissioner may suspend or revoke the third-party bulk filer's registration or may assess a civil penalty upon the third-party bulk filer, not to exceed \$5,000 per violation. A suspension of registration may be for any period of less than six months and may include conditions for reinstatement. If the commissioner revokes the registration, the third-party bulk filer may not apply for reregistration for six months after the revocation. If the commissioner suspends or revokes a registration, the commissioner shall notify the former registrant's clients that the registration has been suspended or revoked. If the commissioner assesses a civil penalty, the commissioner shall not notify the third-party bulk filer's clients of the assessment.

(i) Prior to a suspension, revocation, or assessment of a civil penalty under paragraph (h), the commissioner shall first provide 30 days' written notice to the third-party bulk filer, specifying the violations and informing the third-party bulk filer that the commissioner intends, based upon those violations, to take action against the third-party bulk filer as permitted under this paragraph and paragraph (h). The notice shall advise the third-party bulk filer of the right to contest the suspension, revocation, or assessment of a civil penalty and of the general procedures for a contested case hearing under chapter 14. The notice may be served personally or by mail in the manner prescribed for service of an order of assessment issued under section 270C.33. A suspension or revocation of registration under this paragraph is effective when the commissioner serves a notice of suspension or revocation upon the third-party bulk filer after 30 days have passed following the date of the notice of intent to suspend or revoke without the third-party bulk filer requesting a hearing. If a hearing is timely requested and held, the suspension or revocation is effective upon service by the commissioner of an order of suspension or revocation under section 14.62, subdivision 1.

(j) A third-party bulk filer may terminate its registration by written notice to the commissioner, but the termination does not affect the commissioner's authority to begin or continue a proceeding to take action permitted under paragraph (h). The commissioner shall notify the third-party bulk filer's clients of a termination of registration under this paragraph.

(k) The commissioner shall remind employers at least annually, through the department's regular informational publications that it sends to employers, that employers may telephone the

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department to determine whether a required filing or deposit has been made by a third-party bulk filer.

**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. 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 270C.02, subdivision 2, paragraph (b), 270C.60, 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. 11. **Exemption from withholding and tax.** (a) Subdivisions 7 and 8 do not apply to:

(1) 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; or

(2) compensation paid to an entertainment entity if the compensation paid to the entertainment entity is less than \$600.

(b) Compensation paid to a public speaker or an entertainment entity that is not subject to withholding tax under this subdivision is not subject to tax under subdivision 2 unless the total compensation received by the public speaker or entertainment entity in the tax year exceeds the individual income tax filing requirements for a nonresident individual under section 289A.08, subdivision 1, paragraph (a), clause (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.

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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. 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.

### **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 to perform construction work in Minnesota, shall deduct and withhold eight percent of payments made to the contractor if the value of the contract exceeds \$50,000.

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.

### **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.

### **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.



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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.

#### **290.9727 TAX ON CERTAIN BUILT-IN GAINS.**

Subdivision 1. **Tax imposed.** For an "S" 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.

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.

#### **290.9728 TAX ON CAPITAL GAINS.**

Subdivision 1. **Tax imposed.** There is imposed a tax on the taxable income of an "S" 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, subdivision 19f, in excess of \$25,000 that is allocable to this state under section 290.17, 290.191, or 290.20; or

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(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.

#### **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.

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.

#### **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.

#### **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.

#### **290.9743 ELECTION BY FASIT.**

An entity having a valid election as a financial asset securitization investment trust in effect for a taxable year under section 860L(a) of the Internal Revenue Code shall not be subject to the taxes imposed by this chapter, except the tax imposed under section 290.92.

#### **290.9744 FASIT INCOME TAXABLE TO HOLDERS OF INTERESTS.**

The income of a financial asset securitization investment trust is taxable to the holders of interests in the financial asset securitization investment trust as provided in sections 860H to 860L of the Internal Revenue Code. The income of the holders must be computed under the provisions of this chapter.

#### **297A.61 DEFINITIONS.**

Subd. 3. **Sale and purchase.** (a) "Sale" and "purchase" include, but are not limited to, each of the transactions listed in this subdivision. In applying the provisions of this chapter, the terms "tangible personal property" and "retail sale" include the taxable services listed in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision of these taxable services, unless specifically provided otherwise. Services performed by an employee for an employer are not taxable. Services performed by a partnership or association for another partnership or association are not taxable if one of the entities owns or controls more than 80 percent of the voting power of the equity interest in the other entity. Services performed between members of an affiliated group of corporations are not taxable. For purposes of the preceding sentence, "affiliated group of corporations" means those entities that would be classified as members of an affiliated group as defined under United States Code, title 26, section 1504, disregarding the exclusions in section 1504(b).

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(b) Sale and purchase include:

(1) any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally, for a consideration in money or by exchange or barter; and

(2) the leasing of or the granting of a license to use or consume, for a consideration in money or by exchange or barter, tangible personal property, other than a manufactured home used for residential purposes for a continuous period of 30 days or more.

(c) Sale and purchase include the production, fabrication, printing, or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production, fabrication, printing, or processing.

(d) Sale and purchase include the preparing for a consideration of food. Notwithstanding section 297A.67, subdivision 2, taxable food includes, but is not limited to, the following:

(1) prepared food sold by the retailer;

(2) soft drinks;

(3) candy;

(4) dietary supplements; and

(5) all food sold through vending machines.

(e) A sale and a purchase includes the furnishing for a consideration of electricity, gas, water, or steam for use or consumption within this state.

(f) A sale and a purchase includes the transfer for a consideration of prewritten computer software whether delivered electronically, by load and leave, or otherwise.

(g) A sale and a purchase includes the furnishing for a consideration of the following services:

(1) the privilege of admission to places of amusement, recreational areas, or athletic events, and the making available of amusement devices, tanning facilities, reducing salons, steam baths, health clubs, and spas or athletic facilities;

(2) lodging and related services by a hotel, rooming house, resort, campground, motel, or trailer camp, including furnishing the guest of the facility with access to telecommunication services, and the granting of any similar license to use real property in a specific facility, other than the renting or leasing of it for a continuous period of 30 days or more under an enforceable written agreement that may not be terminated without prior notice and including accommodations intermediary services provided in connection with other services provided under this clause;

(3) nonresidential parking services, whether on a contractual, hourly, or other periodic basis, except for parking at a meter;

(4) the granting of membership in a club, association, or other organization if:

(i) the club, association, or other organization makes available for the use of its members sports and athletic facilities, without regard to whether a separate charge is assessed for use of the facilities; and

(ii) use of the sports and athletic facility is not made available to the general public on the same basis as it is made available to members.

Granting of membership means both onetime initiation fees and periodic membership dues. Sports and athletic facilities include golf courses; tennis, racquetball, handball, and squash courts; basketball and volleyball facilities; running tracks; exercise equipment; swimming pools; and other similar athletic or sports facilities;

(5) delivery of aggregate materials by a third party, excluding delivery of aggregate material used in road construction; and delivery of concrete block by a third party if the delivery would be subject to the sales tax if provided by the seller of the concrete block. For purposes of this clause, "road construction" means construction of:

(i) public roads;

(ii) cartways; and

(iii) private roads in townships located outside of the seven-county metropolitan area up to the point of the emergency response location sign; and

(6) services as provided in this clause:

(i) laundry and dry cleaning services including cleaning, pressing, repairing, altering, and storing clothes, linen services and supply, cleaning and blocking hats, and carpet, drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not include services provided by coin operated facilities operated by the customer;

(ii) motor vehicle washing, waxing, and cleaning services, including services provided by coin operated facilities operated by the customer, and rustproofing, undercoating, and towing of motor vehicles;

(iii) building and residential cleaning, maintenance, and disinfecting services and pest control and exterminating services;

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(iv) detective, security, burglar, fire alarm, and armored car services; but not including services performed within the jurisdiction they serve by off-duty licensed peace officers as defined in section 626.84, subdivision 1, or services provided by a nonprofit organization or any organization at the direction of a county for monitoring and electronic surveillance of persons placed on in-home detention pursuant to court order or under the direction of the Minnesota Department of Corrections;

(v) pet grooming services;

(vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting and maintenance; tree, bush, and shrub pruning, bracing, spraying, and surgery; indoor plant care; tree, bush, shrub, and stump removal, except when performed as part of a land clearing contract as defined in section 297A.68, subdivision 40; and tree trimming for public utility lines. Services performed under a construction contract for the installation of shrubbery, plants, sod, trees, bushes, and similar items are not taxable;

(vii) massages, except when provided by a licensed health care facility or professional or upon written referral from a licensed health care facility or professional for treatment of illness, injury, or disease; and

(viii) the furnishing of lodging, board, and care services for animals in kennels and other similar arrangements, but excluding veterinary and horse boarding services.

(h) A sale and a purchase includes the furnishing for a consideration of tangible personal property or taxable services by the United States or any of its agencies or instrumentalities, or the state of Minnesota, its agencies, instrumentalities, or political subdivisions.

(i) A sale and a purchase includes the furnishing for a consideration of telecommunications services, ancillary services associated with telecommunication services, and pay television services. Telecommunication services include, but are not limited to, the following services, as defined in section 297A.669: air-to-ground radiotelephone service, mobile telecommunication service, postpaid calling service, prepaid calling service, prepaid wireless calling service, and private communication services. The services in this paragraph are taxed to the extent allowed under federal law.

(j) A sale and a purchase includes the furnishing for a consideration of installation if the installation charges would be subject to the sales tax if the installation were provided by the seller of the item being installed.

(k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer to a customer when (1) the vehicle is rented by the customer for a consideration, or (2) the motor vehicle dealer is reimbursed pursuant to a service contract as defined in section 59B.02, subdivision 11.

(l) A sale and a purchase includes furnishing for a consideration of specified digital products or other digital products or granting the right for a consideration to use specified digital products or other digital products on a temporary or permanent basis and regardless of whether the purchaser is required to make continued payments for such right. Wherever the term "tangible personal property" is used in this chapter, other than in subdivisions 10 and 38, the provisions also apply to specified digital products, or other digital products, unless specifically provided otherwise or the context indicates otherwise.

Subd. 4. **Retail sale.** (a) A "retail sale" means:

(1) any sale, lease, or rental of tangible personal property for any purpose, other than resale, sublease, or subrent of items by the purchaser in the normal course of business as defined in subdivision 21; and

(2) any sale of a service enumerated in subdivision 3, for any purpose other than resale by the purchaser in the normal course of business as defined in subdivision 21.

(b) A sale of property used by the owner only by leasing it to others or by holding it in an effort to lease it, and put to no use by the owner other than resale after the lease or effort to lease, is a sale of property for resale.

(c) A sale of master computer software that is purchased and used to make copies for sale or lease is a sale of property for resale.

(d) A sale of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property is a retail sale in whatever quantity sold, whether the sale is for purposes of resale in the form of real property or otherwise.

(e) A sale of carpeting, linoleum, or similar floor covering to a person who provides for installation of the floor covering is a retail sale and not a sale for resale since a sale of floor covering which includes installation is a contract for the improvement of real property.

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(f) A sale of shrubbery, plants, sod, trees, and similar items to a person who provides for installation of the items is a retail sale and not a sale for resale since a sale of shrubbery, plants, sod, trees, and similar items that includes installation is a contract for the improvement of real property.

(g) A sale of tangible personal property that is awarded as prizes is a retail sale and is not considered a sale of property for resale.

(h) A sale of tangible personal property utilized or employed in the furnishing or providing of services under subdivision 3, paragraph (g), clause (1), including, but not limited to, property given as promotional items, is a retail sale and is not considered a sale of property for resale.

(i) A sale of tangible personal property used in conducting lawful gambling under chapter 349 or the State Lottery under chapter 349A, including, but not limited to, property given as promotional items, is a retail sale and is not considered a sale of property for resale.

(j) a sale of machines, equipment, or devices that are used to furnish, provide, or dispense goods or services, including, but not limited to, coin-operated devices, is a retail sale and is not considered a sale of property for resale.

(k) In the case of a lease, a retail sale occurs (1) when an obligation to make a lease payment becomes due under the terms of the agreement or the trade practices of the lessor or (2) in the case of a lease of a motor vehicle, as defined in section 297B.01, subdivision 11, but excluding vehicles with a manufacturer's gross vehicle weight rating greater than 10,000 pounds and rentals of vehicles for not more than 28 days, at the time the lease is executed.

(l) In the case of a conditional sales contract, a retail sale occurs upon the transfer of title or possession of the tangible personal property.

(m) A sale of a bundled transaction in which one or more of the products included in the bundle is a taxable product is a retail sale, except that if one of the products is a telecommunication service, ancillary service, Internet access, or audio or video programming service, and the seller has maintained books and records identifying through reasonable and verifiable standards the portions of the price that are attributable to the distinct and separately identifiable products, then the products are not considered part of a bundled transaction. For purposes of this paragraph:

(1) the books and records maintained by the seller must be maintained in the regular course of business, and do not include books and records created and maintained by the seller primarily for tax purposes;

(2) books and records maintained in the regular course of business include, but are not limited to, financial statements, general ledgers, invoicing and billing systems and reports, and reports for regulatory tariffs and other regulatory matters; and

(3) books and records are maintained primarily for tax purposes when the books and records identify taxable and nontaxable portions of the price, but the seller maintains other books and records that identify different prices attributable to the distinct products included in the same bundled transaction.

(n) A sale of motor vehicle repair paint and materials by a motor vehicle repair or body shop business is a retail sale and the sales tax is imposed on the gross receipts from the retail sale of the paint and materials. The motor vehicle repair or body shop that purchases motor vehicle repair paint and motor vehicle repair materials for resale must either:

(1) separately state each item of paint and each item of materials, and the sales price of each, on the invoice to the purchaser; or

(2) in order to calculate the sales price of the paint and materials, use a method which estimates the amount and monetary value of the paint and materials used in the repair of the motor vehicle by multiplying the number of labor hours by a rate of consideration for the paint and materials used in the repair of the motor vehicle following industry standard practices that fairly calculate the gross receipts from the retail sale of the motor vehicle repair paint and motor vehicle repair materials. An industry standard practice fairly calculates the gross receipts if the sales price of the paint and materials used or consumed in the repair of a motor vehicle equals or exceeds the purchase price paid by the motor vehicle repair or body shop business. Under this clause, the invoice must either separately state the "paint and materials" as a single taxable item, or separately state "paint" as a taxable item and "materials" as a taxable item. This clause does not apply to wholesale transactions at an auto auction facility.

(o) A sale of specified digital products or other digital products to an end user with or without rights of permanent use and regardless of whether rights of use are conditioned upon payment by the purchaser is a retail sale. When a digital code has been purchased that relates to specified digital products or other digital products, the subsequent receipt of or access to the related specified digital products or other digital products is not a retail sale.

(p) A payment made to a cooperative electric association or public utility as a contribution in aid of construction is a contract for improvement to real property and is not a retail sale.

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Subd. 10. **Tangible personal property.** (a) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, steam, and prewritten computer software.

(b) Tangible personal property does not include:

- (1) large ponderous machinery and equipment used in a business or production activity which at common law would be considered to be real property;
- (2) property which is subject to an ad valorem property tax;
- (3) property described in section 272.02, subdivision 9, clauses (a) to (d);
- (4) property described in section 272.03, subdivision 2, clauses (3) and (5); and
- (5) specified digital products, or other digital products, transferred electronically.

Subd. 12. **Farm machinery.** (a) "Farm machinery" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in agricultural production of tangible personal property intended to be sold ultimately at retail including, but not limited to:

- (1) machinery for the preparation, seeding, or cultivation of soil for growing agricultural crops;
- (2) barn cleaners, milking systems, grain dryers, feeding systems including stationary feed bunks, and similar installations, whether or not the equipment is installed by the seller and becomes part of the real property; and
- (3) irrigation equipment sold for exclusively agricultural use, including pumps, pipe fittings, valves, sprinklers, and other equipment necessary to the operation of an irrigation system when sold as part of an irrigation system, whether or not the equipment is installed by the seller and becomes part of the real property.

(b) Farm machinery does not include:

- (1) repair or replacement parts;
- (2) tools, shop equipment, grain bins, fencing material, communication equipment, and other farm supplies;
- (3) motor vehicles taxed under chapter 297B;
- (4) snowmobiles or snow blowers;
- (5) lawn mowers except those used in the production of sod for sale, or garden-type tractors or garden tillers; or
- (6) machinery, equipment, implements, accessories, and contrivances used directly in the production of horses not raised for slaughter, fur-bearing animals, or research animals.

Subd. 13. **Aquaculture production equipment.** (a) "Aquaculture production equipment" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in aquaculture production.

(b) Aquaculture production equipment includes augers and blowers, automatic feed systems, manual feeding equipment, shockers, gill nets, trap nets, seines, box traps, round nets and traps, net pens, dip nets, net washers, floating net supports, floating access walkways, net supports and walkways, growing tanks, holding tanks, troughs, raceways, transport tanks, egg taking equipment, egg hatcheries, egg incubators, egg baskets and troughs, egg graders, egg counting equipment, fish counting equipment, fish graders, fish pumps and loaders, fish elevators, air blowers, air compressors, oxygen generators, oxygen regulators, diffusers and injectors, air supply equipment, oxygenation columns, water coolers and heaters, heat exchangers, water filter systems, water purification systems, waste collection equipment, feed mills, portable scales, feed grinders, feed mixers, feed carts and trucks, power feed wagons, fertilizer spreaders, fertilizer tanks, forage collection equipment, land levelers, loaders, post hole diggers, disc, harrow, plow, and water diversion devices.

(c) Aquaculture production equipment does not include repair or replacement parts for aquaculture production equipment.

Subd. 16a. **Computer.** "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

Subd. 16b. **Electronic.** "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Subd. 16c. **Computer software.** "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

Subd. 17. **Prewritten computer software.** "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions of the programs does not cause the combination to be other than "prewritten computer software." "Prewritten computer software"

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includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of it that is modified or enhanced to any degree, if the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, the modification or enhancement does not constitute "prewritten computer software."

Subd. 17a. **Delivered electronically.** "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

Subd. 17b. **Load and leave.** "Load and leave" means delivered to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

Subd. 18. **Disabled.** "Disabled" means an individual who has a permanent and total disability as defined in section 273.13, subdivision 22.

Subd. 25. **Pay television service.** "Pay television service" means the transmission of video, audio, or other programming service to purchasers, and the subscriber interaction, if any, required for the selection or use of the programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more dealers of communications services. The term includes point-to-multipoint distribution direct to home satellite services by which programming is transmitted or broadcast by microwave or other equipment directly to the subscriber's premises, or any similar or comparable method of service. The term includes all programming services, including subscriptions, digital video recorders, pay-per-view, and music services.

Subd. 26. **Private communication service.** "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communication channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

Subd. 30. **Delivery charges.** "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

Subd. 31. **Prepared food.** "Prepared food" means food that meets either of the following conditions:

- (1) the food is sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws; or
- (2) the food is sold in a heated state or heated by the seller or two or more food ingredients are mixed or combined by the seller for sale as a single item, except for:
  - (i) bakery items, including, but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas;
  - (ii) ready-to-eat meat and seafood in an unheated state sold by weight;
  - (iii) eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its food code so as to prevent food borne illnesses; or
  - (iv) food that is only sliced, repackaged, or pasteurized by the seller.

Subd. 32. **Soft drinks.** "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or greater than 50 percent vegetable or fruit juice by volume.

Subd. 33. **Candy.** "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and must require no refrigeration.

Subd. 34. **Food sold through vending machines.** "Food sold through vending machines" means food dispensed from a machine or other device that accepts payment including honor payments.

Subd. 35. **Direct mail.** "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is

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not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

Subd. 36. **Agricultural production.** "Agricultural production" includes, but is not limited to, horticulture, silviculture, floriculture, maple syrup harvesting, and the raising of pets, livestock as defined in section 17A.03, subdivision 5, poultry, dairy and poultry products, bees and apiary products, the raising and harvesting of agricultural crops, sod, fur-bearing animals, research animals, and horses.

Subd. 37. **Logging equipment.** (a) "Logging equipment" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in the commercial cutting or removal or both of timber or other solid wood forest products intended to be sold ultimately at retail, including, but not limited to:

(1) machinery used for bucking, bunching, debarking, delimiting, felling, forwarding, loading, piling, skidding, topping, and yarding operations performed on timber; and

(2) chain saws.

(b) Logging equipment does not include:

(1) repair or replacement parts;

(2) tools, shop equipment, communication equipment, and other logging supplies;

(3) motor vehicles taxed under chapter 297B;

(4) snowmobiles, snow blowers, or recreational all-terrain vehicles; or

(5) machinery, equipment, implements, accessories, and contrivances used in the creation of other commercial wood products for sale to others, including, but not limited to, milling, planing, carving, wood chipping, or paper manufacturing.

Subd. 39. **Ancillary services.** "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, conference bridging service, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

Subd. 40. **Conference bridging service.** "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

Subd. 41. **Detailed telecommunications billing service.** "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

Subd. 42. **Directory assistance.** "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

Subd. 44. **Voice mail service.** "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Subd. 45. **Ring tone.** "Ring tone" means a digitized sound file that is downloaded onto a device and that may be used to alert the customer with respect to a communication. A ring tone does not include ring back tones or other digital audio files that are not stored on the purchaser's communication device.

Subd. 46. **Fur clothing.** "Fur clothing" means human wearing apparel that is required by the Federal Fur Products Labeling Act, United States Code, title 15, section 69, to be labeled as a fur product, and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. For purposes of this subdivision, "fur" means any animal skin or part of an animal skin with hair, fleece, or fur fibers attached to it, either in its raw or processed state, but does not include animal skins that have been converted into leather or suede, or from which the hair, fleece, or fur fiber has been completely removed in processing the skins.

Subd. 49. **Motor vehicle repair paint and motor vehicle repair materials.** "Motor vehicle repair paint" means a substance composed of solid matter suspended in a liquid medium and applied as a protective or decorative coating to the surface of a motor vehicle in order to restore the motor vehicle to its original condition, and includes primer, body paint, clear coat, and paint thinner used to paint motor vehicles, as defined in section 297B.01.

"Motor vehicle repair materials" means items, other than motor vehicle repair paint or motor vehicle parts, that become a part of a repaired motor vehicle or are consumed in repairing the motor vehicle at retail, and include abrasives, battery water, body filler or putty, bolts and nuts, brake fluid, buffing pads, chamois, cleaning compounds, degreasing compounds, glaze, grease, grinding discs, hydraulic jack oil, lubricants, masking tape, oxygen and acetylene, polishes, rags,



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razor blades, sandpaper, sanding discs, scuff pads, sealer, solder, solvents, striping tape, tack cloth, thinner, waxes, and welding rods. Motor vehicle repair materials do not include items that are not used directly on the motor vehicle, such as floor dry that is used to clean the shop, or cleaning compounds and rags that are used to clean tools, equipment, or the shop and are not used to clean the motor vehicle.

#### **297A.62 SALES TAX IMPOSED; RATES.**

Subd. 3. **Manufactured housing and park trailers.** For retail sales of manufactured homes as defined in section 327.31, subdivision 6, for residential uses, the sales tax under subdivisions 1 and 1a is imposed on 65 percent of the dealer's cost of the manufactured home. For retail sales of new or used park trailers, as defined in section 168.002, subdivision 23, the sales tax under subdivisions 1 and 1a is imposed on 65 percent of the sales price of the park trailer.

#### **297A.63 USE TAXES IMPOSED; RATES.**

Subd. 2. **Use of tangible personal property made from materials.** (a) A use tax is imposed on a person who manufactures, fabricates, or assembles tangible personal property from materials, either within or outside this state and who uses, stores, distributes, or consumes the tangible personal property in Minnesota. The tax is imposed on the purchase price of retail sales of the materials contained in the tangible personal property at the rate of tax imposed under section 297A.62.

(b) No tax is imposed under paragraph (a) if the tax imposed by section 297A.62 was paid on the sales price of materials contained in the tangible personal property.

#### **297A.64 RENTAL MOTOR VEHICLE TAX IMPOSED; RATE.**

Subdivision 1. **Tax imposed.** A tax is imposed on the lease or rental in this state for not more than 28 days of a passenger automobile as defined in section 168.002, subdivision 24, a van as defined in section 168.002, subdivision 40, or a pickup truck as defined in section 168.002, subdivision 26. The rate of tax is 9.2 percent of the sales price. The tax applies whether or not the vehicle is licensed in the state.

Subd. 2. **Fee imposed.** (a) A fee equal to five percent of the sales price is imposed on leases or rentals of vehicles subject to the tax under subdivision 1. The lessor on the invoice to the customer may designate the fee as "a fee imposed by the State of Minnesota for the registration of rental cars."

(b) The provisions of this subdivision do not apply to the vehicles of a nonprofit corporation or similar entity, consisting of individual or group members who pay the organization for the use of a motor vehicle, if the organization:

(1) owns or leases a fleet of vehicles of the type subject to the tax under subdivision 1 that are available to its members for use, priced on the basis of intervals of one hour or less;

(2) parks its vehicles at unstaffed, self-service locations that are accessible at any time of the day;

(3) maintains its vehicles, insures its vehicles on behalf of its members, and purchases fuel for its fleet; and

(4) does not charge usage rates that decline on a per unit basis, whether specified based on distance or time.

Subd. 3. **Administration.** The retailer shall report and pay the tax imposed in subdivision 1 to the commissioner of revenue with the taxes imposed in this chapter. The tax imposed in subdivision 1 and the fee imposed in subdivision 2 are subject to the same interest, penalty, and other provisions provided for sales and use taxes under this chapter and chapter 289A. The audit, assessment, appeal, collection, enforcement, and administrative provisions of this chapter and chapters 270C and 289A, that apply to sales and use taxes, apply to the tax and fee.

Subd. 4. **Exemptions.** (a) The tax and the fee imposed by this section do not apply to a lease or rental of (1) a vehicle to be used by the lessee to provide a licensed taxi service; (2) a hearse or limousine used in connection with a burial or funeral service; or (3) a van designed or adapted primarily for transporting property rather than passengers. The tax and the fee imposed under this section do not apply when the lease or rental of a vehicle is exempt from the tax imposed under section 297A.62, subdivision 1.

(b) The lessor may elect not to charge the fee imposed in subdivision 2 if in the previous calendar year the lessor had no more than 20 vehicles available for lease that would have been subject to tax under this section, or no more than \$50,000 in gross receipts that would have been subject to tax under this section.

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Subd. 5. **Payment of excess fees.** On the first sales tax return due following the end of a calendar year during which a lessor has imposed a fee under subdivision 2, the lessor shall report to the commissioner of revenue, in the form required by the commissioner, the amount of the fee collected during the previous year and the amount of motor vehicle registration taxes paid during the previous year by the lessor under chapter 168 on vehicles subject to the fee under this section. If the amount of the fees collected exceeds the amount of motor vehicle registration taxes paid, the lessor shall remit the excess to the commissioner of revenue at the time the report is submitted.

#### **297A.65 LOTTERY TICKETS; IN LIEU TAX.**

Sales of state lottery tickets are exempt from the tax imposed under section 297A.62. The State Lottery must on or before the 20th day of each month transmit to the commissioner of revenue an amount equal to the gross receipts from the sale of lottery tickets for the previous month multiplied by the tax rate under section 297A.62, subdivision 1. The resulting payment is in lieu of the sales tax that otherwise would be imposed by this chapter. The commissioner shall deposit the money transmitted as provided by section 297A.94 and the money must be treated as other proceeds of the sales tax. For purposes of this section, "gross receipts" means the proceeds of the sale of tickets before deduction of a commission or other compensation paid to the vendor or retailer for selling tickets.

#### **297A.67 GENERAL EXEMPTIONS.**

Subd. 2. **Food and food ingredients.** Except as otherwise provided in this subdivision, food and food ingredients are exempt. For purposes of this subdivision, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients exempt under this subdivision do not include candy, soft drinks, food sold through vending machines, dietary supplements, and prepared foods. Food and food ingredients do not include alcoholic beverages and tobacco. For purposes of this subdivision, "alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume. For purposes of this subdivision, "tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. For purposes of this subdivision, "dietary supplements" means any product, other than tobacco, intended to supplement the diet that:

- (1) contains one or more of the following dietary ingredients:
  - (i) a vitamin;
  - (ii) a mineral;
  - (iii) an herb or other botanical;
  - (iv) an amino acid;
  - (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; and
  - (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in items (i) to (v);
- (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
- (3) is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to Code of Federal Regulations, title 21, section 101.36.

Subd. 3. **Food stamps.** Tangible personal property purchased with food stamps, coupons, or vouchers issued by the federal government under the Food Stamp Program is exempt. This exemption also applies to food purchased under the Special Supplemental Food Program for Women, Infants, and Children. The exemption provided by this subdivision is effective and applies only to the extent required by federal law.

Subd. 4. **Exempt meals at residential facilities.** Prepared food, candy, and soft drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizen homes, and correctional, detention, and detoxification facilities are exempt. Food sold through vending machines is not exempt.

Subd. 5. **Exempt meals at schools.** Prepared food, candy, and soft drinks served at public and private elementary, middle, or secondary schools as defined in section 120A.05 are exempt. Prepared food, candy, and soft drinks served to students at a college, university, or private career school under a board contract are exempt. Food sold through vending machines is not exempt.

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Subd. 6. **Other exempt meals.** (a) Prepared food, candy, and soft drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to disabled persons and their spouses by governmental agencies, nonprofit organizations, or churches, or pursuant to any program funded in whole or in part through United States Code, title 42, sections 3001 through 3045, wherever delivered, prepared, or served, are exempt. Food sold through vending machines is not exempt.

(b) Prepared food, candy, and soft drinks purchased for and served exclusively to children who are less than 14 years of age or disabled children who are less than 16 years of age and who are attending a child care or early childhood education program, are exempt if they are:

(1) purchased by a nonprofit child care facility that is exempt under section 297A.70, subdivision 4, and that primarily serves families with income of 250 percent or less of federal poverty guidelines; and

(2) prepared at the site of the child care facility.

Subd. 7. **Drugs; medical devices.** (a) Sales of the following drugs and medical devices for human use are exempt:

(1) drugs, including over-the-counter drugs;

(2) single-use finger-pricking devices for the extraction of blood and other single-use devices and single-use diagnostic agents used in diagnosing, monitoring, or treating diabetes;

(3) insulin and medical oxygen for human use, regardless of whether prescribed or sold over the counter;

(4) prosthetic devices;

(5) durable medical equipment for home use only;

(6) mobility enhancing equipment;

(7) prescription corrective eyeglasses; and

(8) kidney dialysis equipment, including repair and replacement parts.

(b) Items purchased in transactions covered by:

(1) Medicare as defined under title XVIII of the Social Security Act, United States Code, title 42, section 1395, et seq.; or

(2) Medicaid as defined under title XIX of the Social Security Act, United States Code, title 42, section 1396, et seq.

(c) For purposes of this subdivision:

(1) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages that is:

(i) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

or

(iii) intended to affect the structure or any function of the body.

(2) "Durable medical equipment" means equipment, including repair and replacement parts, including single-patient use items, but not including mobility enhancing equipment, that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

For purposes of this clause, "repair and replacement parts" includes all components or attachments used in conjunction with the durable medical equipment, including repair and replacement parts which are for single patient use only.

(3) "Mobility enhancing equipment" means equipment, including repair and replacement parts, but not including durable medical equipment, that:

(i) is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(ii) is not generally used by persons with normal mobility; and

(iii) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by Code of Federal Regulations, title 21, section 201.66. The label must include a "drug facts" panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation. Over-the-counter drugs do not include grooming and hygiene products, regardless of whether they otherwise meet the

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definition. "Grooming and hygiene products" are soaps, cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens.

(5) "Prescribed" and "prescription" means a direction in the form of an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed health care professional.

(6) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct physical deformity or malfunction; or
- (iii) support a weak or deformed portion of the body.

Prosthetic device does not include corrective eyeglasses.

(7) "Kidney dialysis equipment" means equipment that:

(i) is used to remove waste products that build up in the blood when the kidneys are not able to do so on their own; and

(ii) can withstand repeated use, including multiple use by a single patient, notwithstanding the provisions of clause (2).

(8) A transaction is covered by Medicare or Medicaid if any portion of the cost of the item purchased in the transaction is paid for or reimbursed by the federal government or the state of Minnesota pursuant to the Medicare or Medicaid program, by a private insurance company administering the Medicare or Medicaid program on behalf of the federal government or the state of Minnesota, or by a managed care organization for the benefit of a patient enrolled in a prepaid program that furnishes medical services in lieu of conventional Medicare or Medicaid coverage pursuant to agreement with the federal government or the state of Minnesota.

Subd. 7a. **Accessories and supplies.** Accessories and supplies required for the effective use of durable medical equipment for home use only or purchased in a transaction covered by Medicare or Medicaid, that are not already exempt under subdivision 7, are exempt. Accessories and supplies for the effective use of a prosthetic device, that are not already exempt under subdivision 7, are exempt. For purposes of this subdivision "durable medical equipment," "prosthetic device," "Medicare," and "Medicaid" have the definitions given in subdivision 7.

Subd. 8. **Clothing.** (a) Clothing is exempt. For purposes of this subdivision, "clothing" means all human wearing apparel suitable for general use.

(b) Clothing includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; children and adult diapers, including disposable; ear muffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed boots; underwear; uniforms, athletic and nonathletic; and wedding apparel.

(c) Clothing does not include the following:

- (1) belt buckles sold separately;
- (2) costume masks sold separately;
- (3) patches and emblems sold separately;
- (4) sewing equipment and supplies, including but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles;
- (5) sewing materials that become part of clothing, including but not limited to, buttons, fabric, lace, thread, yarn, and zippers;
- (6) clothing accessories or equipment;
- (7) sports or recreational equipment;
- (8) protective equipment; and
- (9) fur clothing as defined in section 297A.61, subdivision 46.

For purposes of this subdivision, "clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing. Clothing accessories and equipment include, but are not limited to, briefcases; cosmetics; hair notions, including barrettes, hair bows, and hairnets; handbags; handkerchiefs; jewelry; nonprescription sunglasses; umbrellas; wallets; watches; and wigs and hairpieces. "Sports or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. Sports and recreational equipment includes, but is not limited to, ballet and tap shoes; cleated or spiked athletic shoes; gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf gloves; goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins. "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property

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but not suitable for general use. Protective equipment includes, but is not limited to, breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; finger guards; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welders gloves and masks.

Subd. 9. **Baby products.** Breast pumps, baby bottles and nipples, pacifiers, teething rings, and infant syringes are exempt.

Subd. 10. **Caskets; vaults.** Caskets and burial vaults for human burial are exempt.

Subd. 11. **Automobiles; disabled veterans.** Automobiles or other conveyances are exempt if the purchaser is assisted by a grant from the United States in accordance with United States Code, title 38, section 3902.

Subd. 12. **Parts and accessories used to make a motor vehicle disabled accessible.** Parts, accessories, and labor charges that are used solely to modify a motor vehicle to make it disabled accessible are exempt.

Subd. 13. **Textbooks.** Textbooks, including digital books, that are prescribed for use in conjunction with a course of study in a school, college, university, and private career school to students who are regularly enrolled at such institutions are exempt. For purposes of this subdivision (1) a "school" is as defined in section 120A.22, subdivision 4; and (2) "private career school" means a school licensed under section 136A.822.

Subd. 13a. **Instructional materials.** Instructional materials, other than textbooks, that are prescribed for use in conjunction with a course of study in a postsecondary school, college, university, or private career school to students who are regularly enrolled at such institutions are exempt. For purposes of this subdivision, "instructional materials" means materials required to be used directly in the completion of the course of study, including, but not limited to, interactive CDs, tapes, digital audio works, digital audiovisual works, and computer software.

Instructional materials do not include general reference works or other items incidental to the instructional process such as pens, pencils, paper, folders, or computers. For purposes of this subdivision, "school" and "private career school" have the meanings given in subdivision 13.

Subd. 14. **Computers prescribed for use by school.** Computers and related computer software sold by a school, college, university, or private career school to students who are enrolled at the institutions are exempt if:

(1) the use of the computer, or of a substantially similar model of computer, and the related computer software is prescribed by the institution in conjunction with a course of study; and

(2) each student of the institution, or of a unit of the institution in which the student is enrolled, is required by the institution to have such a computer and related software as a condition of enrollment.

For the purposes of this subdivision, "school" and "private career school" have the meanings given in subdivision 13.

Subd. 15. **Residential heating fuels.** Residential heating fuels are exempt as follows:

(1) all fuel oil, coal, wood, steam, hot water, propane gas, and L.P. gas sold to residential customers for residential use;

(2) for the billing months of November, December, January, February, March, and April, natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat; and

(3) for the billing months of November, December, January, February, March, and April, electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat.

Subd. 16. **Residential water services.** Water services for residential use are exempt regardless of how the services are billed.

Subd. 17. **Feminine hygiene products.** Sanitary napkins, tampons, or similar items used for feminine hygiene are exempt.

Subd. 18. **Used motor oils.** Used motor oils are exempt.

Subd. 19. **Cross-country ski passes.** Cross-country ski passes issued under sections 85.40 to 85.43 are exempt.

Subd. 20. **Manufactured homes.** Manufactured homes, as defined in section 327.31, subdivision 6, to be used by the purchaser for residential purposes are exempt, unless the sale is the first retail sale of the manufactured home in this state.

Subd. 21. **De minimis exemption.** A purchase subject to use tax under section 297A.63 is exempt if (1) the purchase is made by an individual for personal use, and (2) the total purchases that are subject to the use tax do not exceed \$770 in the calendar year. For purposes of this subdivision, "personal use" includes purchases for gifts. If an individual makes purchases subject to use tax of more than \$770 in the calendar year, the individual must pay the use tax on the entire

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amount. This exemption does not apply to purchases made from retailers who are required or registered to collect taxes under this chapter.

Subd. 23. **Occasional sales.** Isolated and occasional sales in Minnesota not made in the normal course of business of selling that kind of property or service are exempt. The storage, use, or consumption of property or services acquired as a result of such a sale is exempt. This exemption does not apply to sales of tangible personal property primarily used in a trade or business.

Subd. 25. **Maintenance of cemetery grounds.** Lawn care and related services used in the maintenance of cemetery grounds are exempt. For purposes of this subdivision, "lawn care and related services" means the services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), item (vi), and "cemetery" means a cemetery for human burial.

Subd. 26. **Trade allowance.** The amount allowed as a credit against the sales price for tangible personal property taken in trade for resale is exempt.

Subd. 27. **Sewing materials.** Sewing materials are exempt. For purposes of this subdivision "sewing materials" mean fabric, thread, zippers, interfacing, buttons, trim, and other items that are usually directly incorporated into the construction of clothing, as defined in subdivision 8, regardless of whether it is actually used for making clothing. It does not include batting, foam, or fabric specifically manufactured for arts and craft projects, or other materials for craft projects.

Subd. 28. **Ambulance supplies, parts, and equipment.** The following sales to or use by an ambulance service licensed under section 144E.10 are exempt:

- (1) supplies and equipment used to provide medical care; and
- (2) repair and replacement parts for ambulances and vehicles equipped and specifically intended for emergency response.

Subd. 29. **Solar energy products.** A solar energy system, as defined in section 216C.06, subdivision 17, is exempt.

Subd. 31. **Service loaner vehicle covered by warranty.** The loan of a vehicle by a motor vehicle dealer to a customer as a replacement for a vehicle being serviced or repaired is exempt if the vehicle is loaned pursuant to a warranty included in the original purchase price of the vehicle being serviced or repaired.

Subd. 32. **Cigarettes.** Cigarettes upon which a tax has been imposed under section 297F.25 are exempt.

### **297A.68 BUSINESS EXEMPTIONS.**

Subdivision 1. **Scope.** The gross receipts from the sale of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

Subd. 2. **Materials consumed in industrial production.** (a) Materials stored, used, or consumed in industrial production of tangible personal property intended to be sold ultimately at retail, are exempt, whether or not the item so used becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

- (1) chemicals, including chemicals used for cleaning food processing machinery and equipment;
- (2) materials, including chemicals, fuels, and electricity purchased by persons engaged in industrial production to treat waste generated as a result of the production process;
- (3) fuels, electricity, gas, and steam used or consumed in the production process, except that electricity, gas, or steam used for space heating, cooling, or lighting is exempt if (i) it is in excess of the average climate control or lighting for the production area, and (ii) it is necessary to produce that particular product;
- (4) petroleum products and lubricants;
- (5) packaging materials, including returnable containers used in packaging food and beverage products;
- (6) accessory tools, equipment, and other items that are separate detachable units with an ordinary useful life of less than 12 months used in producing a direct effect upon the product; and
- (7) the following materials, tools, and equipment used in metal-casting: crucibles, thermocouple protection sheaths and tubes, stalk tubes, refractory materials, molten metal filters and filter boxes, degassing lances, and base blocks.

(b) This exemption does not include:

- (1) machinery, equipment, implements, tools, accessories, appliances, contrivances and furniture and fixtures, except those listed in paragraph (a), clause (6); and

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(2) petroleum and special fuels used in producing or generating power for propelling ready-mixed concrete trucks on the public highways of this state.

(c) Industrial production includes, but is not limited to, research, development, design or production of any tangible personal property, manufacturing, processing (other than by restaurants and consumers) of agricultural products (whether vegetable or animal), commercial fishing, refining, smelting, reducing, brewing, distilling, printing, mining, quarrying, lumbering, generating electricity, the production of road building materials, and the research, development, design, or production of computer software. Industrial production does not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process.

(d) Industrial production does not include:

(1) the furnishing of services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii); or

(2) the transportation, transmission, or distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through pipes, lines, tanks, mains, or other means of transporting those products. For purposes of this paragraph, "transportation, transmission, or distribution" does not include blending of petroleum or biodiesel fuel as defined in section 239.77.

Subd. 3. **Materials used in providing certain taxable services.** (a) Materials stored, used, or consumed in providing a taxable service listed in section 297A.61, subdivision 3, paragraph (g), clause (6), intended to be sold ultimately at retail are exempt.

(b) This exemption includes, but is not limited to:

(1) chemicals, lubricants, packaging materials, seeds, trees, fertilizers, and herbicides, if these items are used or consumed in providing the taxable service;

(2) chemicals used to treat waste generated as a result of providing the taxable service;

(3) accessory tools, equipment, and other items that are separate detachable units used in providing the service and that have an ordinary useful life of less than 12 months; and

(4) fuel, electricity, gas, and steam used or consumed in the production process, except that electricity, gas, or steam used for space heating, cooling, or lighting is exempt if (i) it is in excess of average climate control or lighting, and (ii) it is necessary to produce that particular service.

(c) This exemption does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, and fixtures used in providing the taxable service.

Subd. 4. **Taconite, other ores, metals, or minerals; production materials.** Mill liners, grinding rods, and grinding balls that are substantially consumed in the production of taconite or other ores, metals, or minerals are exempt when sold to or stored, used, or consumed by persons taxed under the in-lieu or net proceeds provisions of chapter 298.

Subd. 5. **Capital equipment.** (a) Capital equipment is exempt.

"Capital equipment" means machinery and equipment purchased or leased, and used in this state by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail if the machinery and equipment are essential to the integrated production process of manufacturing, fabricating, mining, or refining. Capital equipment also includes machinery and equipment used primarily to electronically transmit results retrieved by a customer of an online computerized data retrieval system.

(b) Capital equipment includes, but is not limited to:

(1) machinery and equipment used to operate, control, or regulate the production equipment;

(2) machinery and equipment used for research and development, design, quality control, and testing activities;

(3) environmental control devices that are used to maintain conditions such as temperature, humidity, light, or air pressure when those conditions are essential to and are part of the production process;

(4) materials and supplies used to construct and install machinery or equipment;

(5) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to machinery or equipment;

(6) materials used for foundations that support machinery or equipment;

(7) materials used to construct and install special purpose buildings used in the production process;

(8) ready-mixed concrete equipment in which the ready-mixed concrete is mixed as part of the delivery process regardless if mounted on a chassis, repair parts for ready-mixed concrete trucks, and leases of ready-mixed concrete trucks; and

(9) machinery or equipment used for research, development, design, or production of computer software.

(c) Capital equipment does not include the following:

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- (1) motor vehicles taxed under chapter 297B;
- (2) machinery or equipment used to receive or store raw materials;
- (3) building materials, except for materials included in paragraph (b), clauses (6) and (7);
- (4) machinery or equipment used for nonproduction purposes, including, but not limited to, the following: plant security, fire prevention, first aid, and hospital stations; support operations or administration; pollution control; and plant cleaning, disposal of scrap and waste, plant communications, space heating, cooling, lighting, or safety;
- (5) farm machinery and aquaculture production equipment as defined by section 297A.61, subdivisions 12 and 13;
- (6) machinery or equipment purchased and installed by a contractor as part of an improvement to real property;
- (7) machinery and equipment used by restaurants in the furnishing, preparing, or serving of prepared foods as defined in section 297A.61, subdivision 31;
- (8) machinery and equipment used to furnish the services listed in section 297A.61, subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii);
- (9) machinery or equipment used in the transportation, transmission, or distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through pipes, lines, tanks, mains, or other means of transporting those products. This clause does not apply to machinery or equipment used to blend petroleum or biodiesel fuel as defined in section 239.77; or
- (10) any other item that is not essential to the integrated process of manufacturing, fabricating, mining, or refining.

(d) For purposes of this subdivision:

(1) "Equipment" means independent devices or tools separate from machinery but essential to an integrated production process, including computers and computer software, used in operating, controlling, or regulating machinery and equipment; and any subunit or assembly comprising a component of any machinery or accessory or attachment parts of machinery, such as tools, dies, jigs, patterns, and molds.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Integrated production process" means a process or series of operations through which tangible personal property is manufactured, fabricated, mined, or refined. For purposes of this clause, (i) manufacturing begins with the removal of raw materials from inventory and ends when the last process prior to loading for shipment has been completed; (ii) fabricating begins with the removal from storage or inventory of the property to be assembled, processed, altered, or modified and ends with the creation or production of the new or changed product; (iii) mining begins with the removal of overburden from the site of the ores, minerals, stone, peat deposit, or surface materials and ends when the last process before stockpiling is completed; and (iv) refining begins with the removal from inventory or storage of a natural resource and ends with the conversion of the item to its completed form.

(4) "Machinery" means mechanical, electronic, or electrical devices, including computers and computer software, that are purchased or constructed to be used for the activities set forth in paragraph (a), beginning with the removal of raw materials from inventory through completion of the product, including packaging of the product.

(5) "Machinery and equipment used for pollution control" means machinery and equipment used solely to eliminate, prevent, or reduce pollution resulting from an activity described in paragraph (a).

(6) "Manufacturing" means an operation or series of operations where raw materials are changed in form, composition, or condition by machinery and equipment and which results in the production of a new article of tangible personal property. For purposes of this subdivision, "manufacturing" includes the generation of electricity or steam to be sold at retail.

(7) "Mining" means the extraction of minerals, ores, stone, or peat.

(8) "Online data retrieval system" means a system whose cumulation of information is equally available and accessible to all its customers.

(9) "Primarily" means machinery and equipment used 50 percent or more of the time in an activity described in paragraph (a).

(10) "Refining" means the process of converting a natural resource to an intermediate or finished product, including the treatment of water to be sold at retail.

(11) This subdivision does not apply to telecommunications equipment as provided in subdivision 35a, and does not apply to wire, cable, fiber, poles, or conduit for telecommunications services.

Subd. 6. **Special tooling.** Special tooling is exempt. "Special tooling" means tools, dies, jigs, patterns, gauges, and other special tools that have value and use only for the buyer and for the use



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for which they are made. An item has value and use only to the buyer if the item is not standard enough to be stocked or ordered from a catalog or other sales literature, but must be produced in accordance with special requirements peculiar to the buyer and not common to someone else whose conditions for possible use of the material are reasonably similar to the buyer's.

Subd. 7. **Air cooling equipment.** Equipment used for air cooling is exempt, if the equipment is purchased for conversion or replacement of an existing groundwater-based once-through cooling system as required under section 103G.271, subdivision 5.

Subd. 8. **Pollution control equipment; steel reprocessing.** Pollution control equipment purchased by a steel reprocessing firm is exempt if the equipment is necessary to meet state or federal emission standards. For purposes of this subdivision:

(1) "pollution control equipment" means equipment used for the purpose of eliminating, preventing, or reducing air, land, or water pollution during or as a result of the manufacturing process; and

(2) "steel reprocessing firm" means a firm whose primary business is the recovery of steel from automobiles, appliances, and other steel products and the rerefining of this recovered metal into new steel products.

Subd. 9. **Super Bowl admissions.** The granting of the privilege of admission to a world championship football game sponsored by the National Football League is exempt.

Subd. 10. **Publications; publication materials.** Tangible personal property that is used or consumed in producing any publication regularly issued at average intervals not exceeding three months is exempt, and any such publication is exempt. "Publication" includes, but is not limited to, a qualified newspaper as defined by section 331A.02, together with any supplements or enclosures. "Publication" does not include magazines and periodicals sold over the counter. Tangible personal property that is used or consumed in producing a publication does not include machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture, and fixtures used in the publication, or fuel, electricity, gas, or steam used for space heating or lighting.

Advertising contained in a publication is a nontaxable service and is exempt. Persons who publish or sell newspapers are engaging in a nontaxable service with respect to gross receipts realized from such news-gathering or news-publishing activities, including the sale of advertising.

Subd. 11. **Advertising materials.** Materials designed to advertise and promote the sale of merchandise or services are exempt if these materials are mailed or transferred to a person outside the state for use solely outside the state. Mailing and reply envelopes and cards and other shipping materials including, but not limited to, boxes, labels, containers, and banding, used exclusively in connection with these advertising and promotional materials are included in this exemption. The exemption applies regardless of where the mailing occurs. The storage of these materials in the state for the purpose of subsequently shipping or otherwise transferring the material out of state is also exempt if the other conditions in this subdivision are met. For purposes of this subdivision, materials that have a primary purpose other than advertising, such as fulfilling a legal obligation or furnishing nonadvertising information, are not materials designed to advertise and promote the sale of merchandise or services even if they do include advertising content.

Subd. 12. **Wind energy conversion systems.** Wind energy conversion systems, as defined in section 216C.06, subdivision 19, that are used as an electric power source are exempt, and the materials used to manufacture, install, construct, repair, or replace them are exempt.

Subd. 13. **Outstate transport or delivery.** (a) Tangible personal property is exempt if all of the following conditions are met:

(1) the property, without intermediate use, is shipped or transported outside Minnesota by the purchaser or is stored, processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property that is transported or shipped outside Minnesota; and

(2) the property is used in a trade or business outside Minnesota after being shipped or transported outside of Minnesota, and is not returned to Minnesota, except in the course of interstate commerce; and

(3) the property is either (i) not subject to tax in the state or country to which it is transported for storage or use, or (ii) to be used in other states or countries as part of a maintenance contract.

(b) For purposes of this subdivision, storage or processing, fabricating, manufacturing, attaching to, or incorporating into other property is not intermediate use.

Subd. 14. **Property in transit.** Tangible personal property is exempt if all of the following conditions are met:

(1) it is shipped or brought into Minnesota by a for-hire carrier;

(2) without use, it is kept in a public warehouse;

(3) it is kept for the purpose of being later transported outside Minnesota; and

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(4) after storage, it is used solely outside Minnesota, except in the course of interstate commerce.

Subd. 16. **Packing materials.** Packing materials used to pack and ship household goods and that are provided to and remain with the customer of a for-hire carrier are exempt if the ultimate destination of the goods is outside Minnesota and if the packing materials are not later returned to a point within Minnesota, except in the course of interstate commerce. This exemption does not apply to tools, equipment, pads, or accessories owned or leased by the for-hire carrier.

Subd. 17. **Ships used in interstate commerce.** Repair, replacement, and rebuilding parts and materials, and lubricants, for ships or vessels used or to be used principally in interstate or foreign commerce are exempt. Vessels with a gross registered tonnage of at least 3,000 tons are exempt.

Subd. 19. **Petroleum products.** The following petroleum products are exempt:

(1) products upon which a tax has been imposed and paid under chapter 296A, and for which no refund has been or will be allowed because the buyer used the fuel for nonhighway use;

(2) products that are used in the improvement of agricultural land by constructing, maintaining, and repairing drainage ditches, tile drainage systems, grass waterways, water impoundment, and other erosion control structures;

(3) products purchased by a transit system receiving financial assistance under section 174.24, 256B.0625, subdivision 17, or 473.384;

(4) products purchased by an ambulance service licensed under chapter 144E;

(5) products used in a passenger snowmobile, as defined in section 296A.01, subdivision 39, for off-highway business use as part of the operations of a resort as provided under section 296A.16, subdivision 2, clause (2);

(6) products purchased by a state or a political subdivision of a state for use in motor vehicles exempt from registration under section 168.012, subdivision 1, paragraph (b);

(7) products purchased by providers of transportation to recipients of medical assistance home and community-based services waivers enrolled in day programs, including adult day care, family adult day care, day treatment and habilitation, prevocational services, and structured day services; or

(8) products used in a motor vehicle used exclusively as a mobile medical unit for the provision of medical or dental services by a federally qualified health center, as defined under title 19 of the federal Social Security Act, as amended by Section 4161 of the Omnibus Budget Reconciliation Act of 1990.

Subd. 20. **Natural gas in vehicles.** Natural gas to be used as a fuel in vehicles propelled by natural gas is exempt.

Subd. 22. **Copies of court reporter documents.** Transcripts or copies of transcripts of verbatim testimony are exempt if produced and sold by court reporters or other transcribers of legal proceedings to individuals or entities that are parties to or representatives of parties to the proceeding to which the transcript relates.

Subd. 23. **Automatic fire-safety sprinkler systems.** Automatic fire-safety sprinkler systems described in section 273.11, subdivision 6a, are exempt.

Subd. 24. **Waste processing equipment.** Equipment used for processing solid or hazardous waste at a resource recovery facility, as defined in section 115A.03, subdivision 28, is exempt, including pollution control equipment at a resource recovery facility that burns refuse-derived fuel or mixed municipal solid waste as its primary fuel. An electric generation facility that processes and utilizes waste tires as its primary fuel is a resource recovery facility for the purposes of this section.

Subd. 25. **Sale of property used in a trade or business.** (a) The sale of tangible personal property primarily used in a trade or business is exempt if the sale is not made in the normal course of business of selling that kind of property and if one of the following conditions is satisfied:

(1) the sale occurs in a transaction subject to or described in section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033 of the Internal Revenue Code;

(2) the sale is between members of a controlled group as defined in section 1563(a) of the Internal Revenue Code;

(3) the sale is a sale of farm machinery;

(4) the sale is a farm auction sale;

(5) the sale is a sale of substantially all of the assets of a trade or business; or

(6) the total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale and the preceding 11 calendar months does not exceed \$1,000.

The use, storage, distribution, or consumption of tangible personal property acquired as a result of a sale exempt under this subdivision is also exempt.

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

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(1) A "farm auction" is a public auction conducted by a licensed auctioneer if substantially all of the property sold consists of property used in the trade or business of farming and property not used primarily in a trade or business.

(2) "Trade or business" includes the assets of a separate division, branch, or identifiable segment of a trade or business if, before the sale, the income and expenses attributable to the separate division, branch, or identifiable segment could be separately ascertained from the books of account or record (the lease or rental of an identifiable segment does not qualify for the exemption).

(3) A "sale of substantially all of the assets of a trade or business" must occur as a single transaction or a series of related transactions within the 12-month period beginning on the date of the first sale of assets intended to qualify for the exemption provided in paragraph (a), clause (5).

Subd. 28. **Medical supplies.** Medical supplies purchased by a licensed health care facility or licensed health care professional to provide medical treatment to residents or patients are exempt. The exemption does not apply to durable medical equipment or components of durable medical equipment, laboratory supplies, radiological supplies, and other items used in providing medical services. For purposes of this subdivision, "medical supplies" means adhesive and nonadhesive bandages, gauze pads and strips, cotton applicators, antiseptics, eye solution, and other similar supplies used directly on the resident or patient in providing medical services.

Subd. 29. **Prizes.** Tangible personal property that will be given as prizes to players in games of skill or chance is exempt if the games are conducted at events such as community festivals, fairs, and carnivals and if the events last less than six days. This exemption does not apply to property awarded as prizes in connection with lawful gambling as defined in section 349.12 or the state lottery.

Subd. 30. **Television commercials.** Tangible personal property primarily used or consumed in the preproduction, production, or postproduction of a television commercial is exempt. Any such commercial, regardless of the medium in which it is transferred, is exempt. "Preproduction" and "production" include, but are not limited to, all activities related to the preparation for shooting and the shooting of television commercials, including film processing. Equipment rented for the preproduction and production activities is exempt. "Postproduction" includes, but is not limited to, all activities related to the finishing and duplication of television commercials. This exemption does not apply to tangible personal property used primarily in administration, general management, or marketing. Machinery and equipment purchased for use in producing such commercials and fuel, electricity, gas, or steam used for space heating or lighting are not exempt under this subdivision.

Subd. 31. **Waste management containers and compactors.** Compactors and waste collection containers are exempt if they are purchased by a waste management service provider and are used in providing waste management services as defined in section 297H.01, subdivision 12. A waste management service provider that does not remit tax on customer charges or lease or rental payments for compactors and waste collection containers under chapter 297H is ineligible for this exemption.

Subd. 32. **Events located outside Minnesota.** Tickets or admissions to places of amusement located outside Minnesota or to athletic events to be held outside Minnesota are exempt.

Subd. 33. **Patent, trademark, and copyright drawings and documents.** A drawing, diagram, or similar or related document or a copy of such a document is exempt if the document:

(1) is produced and sold by a patent drafter; and

(2) is for use in:

(i) a patent, trademark, or copyright application to be filed with government agencies;

(ii) an application to the federal Food and Drug Administration for approval of a medical device; or

(iii) a judicial or quasi-judicial proceeding, including mediation and arbitration, relating to the validity of or legal rights under a patent, trademark, or copyright.

For purposes of this subdivision, a "patent drafter" is a person who prepares illustrative documents required in the preparation of intellectual property applications.

Subd. 34. **Machinery and equipment for ski areas.** Tangible personal property used or consumed primarily and directly for tramways at ski areas or in snowmaking and snow-grooming operations at ski hills, ski slopes, or ski trails, including machinery, equipment, fuel, electricity, and water additives used in the production and maintenance of machine-made snow, is exempt.

Subd. 35a. **Telecommunications or pay television services machinery and equipment.** (a) Telecommunications or pay television services machinery and equipment purchased or leased for use directly by a telecommunications or pay television services provider primarily in the provision of telecommunications or pay television services that are ultimately to be sold at retail are exempt, regardless of whether purchased by the owner, a contractor, or a subcontractor.

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(b) For purposes of this subdivision, "telecommunications or pay television machinery and equipment" includes, but is not limited to:

(1) machinery, equipment, and fixtures utilized in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunications or pay television services, such as computers, transformers, amplifiers, routers, bridges, repeaters, multiplexers, and other items performing comparable functions;

(2) machinery, equipment, and fixtures used in the transportation of telecommunications or pay television services, such as radio transmitters and receivers, satellite equipment, microwave equipment, and other transporting media, but not wire, cable, fiber, poles, or conduit;

(3) ancillary machinery, equipment, and fixtures that regulate, control, protect, or enable the machinery in clauses (1) and (2) to accomplish its intended function, such as auxiliary power supply, test equipment, towers, heating, ventilating, and air conditioning equipment necessary to the operation of the telecommunications or pay television equipment; and software necessary to the operation of the telecommunications or pay television equipment; and

(4) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to qualified machinery or equipment.

Subd. 36. **Delivery or distribution charges; direct mail.** Charges for the delivery or distribution of direct mail are exempt if the charges are separately stated on an invoice or similar billing document given to the purchaser.

Subd. 37. **Job opportunity building zones.** (a) Purchases of tangible personal property or taxable services by a qualified business, as defined in section 469.310, are exempt if the property or services are primarily used or consumed in a job opportunity building zone designated under section 469.314. For purposes of this subdivision, an aerial camera package, including any camera, computer, and navigation device contained in the package, that is used in an aircraft that is operated under a Federal Aviation Administration Restricted Airworthiness Certificate according to Code of Federal Regulations, title 14, part 21, section 21.25(b)(3), relating to aerial surveying, and that is based, maintained, and dispatched from a job opportunity building zone, qualifies as primarily used or consumed in a job opportunity building zone if the imagery acquired from the aerial camera package is returned to the job opportunity building zone for processing. The exemption for an aerial camera package is limited as provided in this subdivision and the tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75. The total amount of the aerial camera package exemption refunded for all taxpayers for all fiscal years is limited to \$50,000 in taxes.

(b) Purchase and use of construction materials and supplies used or consumed in, and equipment incorporated into, the construction of improvements to real property in a job opportunity building zone are exempt if the improvements after completion of construction are to be used in the conduct of a qualified business, as defined in section 469.310. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax regardless of whether the local sales tax is imposed on the sales taxable as defined under this chapter.

(d) This subdivision applies to sales, if the purchase was made and delivery received during the duration of the zone.

(e) Notwithstanding the restriction in paragraph (a), which requires items purchased to be primarily used or consumed in the zone, purchases by a qualified business that is an electrical cooperative located in Meeker County of equipment and materials used for the generation, transmission, and distribution of electrical energy are exempt under this subdivision, except that:

(1) the exemption for materials and equipment used or consumed outside the zone must not exceed \$200,000 in taxes for all taxpayers for all fiscal years; and

(2) no sales and use tax exemption is allowed for equipment purchased for resale.

For purposes of this paragraph, the tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 39. **Preexisting bids or contracts.** (a) The sale of tangible personal property or services is exempt from tax or a tax rate increase for a period of six months from the effective date of the law change that results in the imposition of the tax or the tax rate increase under this chapter if:

(1) the act imposing the tax or increasing the tax rate does not have transitional effective date language for existing construction contracts and construction bids; and

(2) the requirements of paragraph (b) are met.

(b) A sale is tax exempt under paragraph (a) if it meets the requirements of either clause (1) or (2):

(1) For a construction contract:

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- (i) the goods or services sold must be used for the performance of a bona fide written lump sum or fixed price construction contract;
  - (ii) the contract must be entered into before the date the goods or services become subject to the sales tax or the tax rate was increased;
  - (iii) the contract must not provide for allocation of future taxes; and
  - (iv) for each qualifying contract the contractor must keep documentation of the contract on which an exemption is to be claimed.
- (2) For a construction bid:
- (i) the goods or services sold must be used pursuant to an obligation of a bid or bids;
  - (ii) the bid or bids must be submitted and accepted before the date the goods or services became subject to the sales tax or the tax rate was increased;
  - (iii) the bid or bids must not be able to be withdrawn, modified, or changed without forfeiting a bond; and
  - (iv) for each qualifying bid, the contractor must keep documentation of the bid on which an exemption is to be claimed.

Subd. 40. **Land clearing.** Tree, bush, shrub, and stump removal are exempt when sold to contractors or subcontractors as part of a land clearing contract. For purposes of this subdivision, "land clearing contract" means a contract for the removal of trees, bushes, and shrubs, including the removal of roots and stumps, to develop a site. This exemption does not apply to land clearing of a portion of a site to allow for remodeling, improvement, or expansion of an existing structure.

Subd. 42. **Qualified data centers.** (a) Purchases of enterprise information technology equipment and computer software for use in a qualified data center, or a qualified refurbished data center, are exempt, except that computer software maintenance agreements are exempt for purchases made after June 30, 2013. The tax on purchases exempt under this paragraph must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded after June 30, 2013, in the manner provided in section 297A.75. This exemption includes enterprise information technology equipment and computer software purchased to replace or upgrade enterprise information technology equipment and computer software in a qualified data center, or a qualified refurbished data center.

(b) Electricity used or consumed in the operation of a qualified data center or qualified refurbished data center is exempt.

(c) For purposes of this subdivision, "qualified data center" means a facility in Minnesota:

(1) that is comprised of one or more buildings that consist in the aggregate of at least 25,000 square feet, and that are located on a single parcel or on contiguous parcels, where the total cost of construction or refurbishment, investment in enterprise information technology equipment, and computer software is at least \$30,000,000 within a 48-month period. The 48-month period begins no sooner than July 1, 2012, except that costs for computer software maintenance agreements purchased before July 1, 2013, are not included in determining if the \$30,000,000 threshold has been met;

(2) that is constructed or substantially refurbished after June 30, 2012, where "substantially refurbished" means that at least 25,000 square feet have been rebuilt or modified, including:

(i) installation of enterprise information technology equipment; environmental control, computer software, and energy efficiency improvements; and

(ii) building improvements; and

(3) that is used to house enterprise information technology equipment, where the facility has the following characteristics:

(i) uninterruptible power supplies, generator backup power, or both;

(ii) sophisticated fire suppression and prevention systems; and

(iii) enhanced security. A facility will be considered to have enhanced security if it has restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring pass codes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

In determining whether the facility has the required square footage, the square footage of the following spaces shall be included if the spaces support the operation of enterprise information technology equipment: office space, meeting space, and mechanical and other support facilities. For purposes of this subdivision, "computer software" includes, but is not limited to, software utilized or loaded at a qualified data center or qualified refurbished data center, including maintenance, licensing, and software customization.

(d) For purposes of this subdivision, a "qualified refurbished data center" means an existing facility that qualifies as a data center under paragraph (c), clauses (2) and (3), but that is comprised of one or more buildings that consist in the aggregate of at least 25,000 square feet, and that are located on a single parcel or contiguous parcels, where the total cost of construction

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or refurbishment, investment in enterprise information technology equipment, and computer software is at least \$50,000,000 within a 24-month period.

(e) For purposes of this subdivision, "enterprise information technology equipment" means computers and equipment supporting computing, networking, or data storage, including servers and routers. It includes, but is not limited to: cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of a qualified data center or qualified refurbished data center, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the qualified data center or qualified refurbished data center.

(f) A qualified data center or qualified refurbished data center may claim the exemptions in this subdivision for purchases made either within 20 years of the date of its first purchase qualifying for the exemption under paragraph (a), or by June 30, 2042, whichever is earlier.

(g) The purpose of this exemption is to create jobs in the construction and data center industries.

(h) This subdivision is effective for sales and purchases made before July 1, 2042.

(i)(1) The commissioner of employment and economic development must certify to the commissioner of revenue, in a format approved by the commissioner of revenue, when a qualified data center has met the requirements under paragraph (c) or a qualified refurbished data center has met the requirements under paragraph (d). The certification must provide the following information regarding each qualified data center or qualified refurbished data center:

(i) the total square footage amount;

(ii) the total amount of construction or refurbishment costs and the total amount of qualifying investments in enterprise information technology equipment and computer software; and

(iii) the beginning and ending of the applicable period under either paragraph (c) or (d) in which the qualifying expenditures and purchases under item (ii) were made, but in no case shall the period begin before July 1, 2012;

(2) Any refund for sales tax paid on qualifying purchases under this subdivision must not be issued unless the commissioner of revenue has received the certification required under clause (1) either from the commissioner of employment and economic development or the qualified data center or qualified refurbished data center claiming the refund; and

(3) The commissioner of employment and economic development must annually notify the commissioner of revenue of the qualified data centers that are projected to meet the requirements under paragraph (c) and the qualified refurbished data centers that are projected to meet the requirements under paragraph (d) in each of the next four years. The notification must provide the information required under clause (1), items (i) to (iii), for each qualified data center or qualified refurbished data center.

Subd. 43. **Resold admission tickets.** (a) When a ticket reseller who purchased a ticket from a seller who is in the business of selling tickets resells the ticket, the ticket reseller must charge tax on the total amount for which the ticket is resold and the following rules apply:

(1) if the ticket reseller did not use a fully completed exemption certificate to claim the exemption from tax for resale, but instead paid tax on the original purchase, then the ticket reseller may do one of the following:

(i) seek a refund of that tax under section 289A.50; or

(ii) pass through to the purchaser the amount of the tax the ticket reseller paid on the original purchase, by giving the purchaser credit for the Minnesota state and local tax paid by the ticket reseller on the ticket reseller's original purchase of the ticket. Credit for the tax cannot exceed either the sales tax paid on the original price of the ticket or the sales tax charged by the ticket reseller to the final purchaser;

(2) if the ticket reseller did not pay tax on the original purchase, tax is due on the full amount of the ticket when resold, without a credit given to the final purchaser; and

(3) the ticket reseller must retain records documenting the price and tax paid by the ticket reseller when purchasing the ticket and the price and tax collected when the ticket reseller resells the ticket.

(b) When a ticket reseller who purchased a ticket from a seller who is not in the business of selling tickets resells the ticket, the ticket reseller must charge tax on the total amount for which the ticket is resold and the following rules apply:

(1) the ticket reseller may credit its purchaser an amount equal to the tax the ticket reseller would have paid its seller, had the seller been registered to collect tax on its sale of the ticket to the ticket reseller. Credit for the tax cannot exceed either the sales tax paid on the original price of

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the ticket or the sales tax charged by the ticket reseller to the final purchaser. It is presumed that the original purchase price of the ticket is the face amount of the ticket;

(2) if no tax was paid on the original purchase, tax is due on the full amount of the ticket when resold, without a credit given to the ticket reseller's purchaser; and

(3) the ticket reseller must retain records documenting the price and tax paid by the ticket reseller when purchasing the ticket and the price and tax collected when the ticket reseller resells the ticket.

(c) For purposes of this subdivision, "ticket reseller" means a person who:

(1) purchases admission tickets to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind;

(2) resells admission tickets to events under clause (1); and

(3) is registered to collect tax under this chapter.

Subd. 44. **Greater Minnesota business expansions.** (a) Purchases and use of tangible personal property or taxable services by a qualified business, as defined in section 116J.8738, are exempt if:

(1) the business subsidy agreement provides that the exemption under this subdivision applies;

(2) the property or services are primarily used or consumed at the facility in greater Minnesota identified in the business subsidy agreement; and

(3) the purchase was made and delivery received during the duration of the certification of the business as a qualified business under section 116J.8738.

(b) Purchase and use of construction materials and supplies used or consumed in, and equipment incorporated into, the construction of improvements to real property in greater Minnesota are exempt if the improvements after completion of construction are to be used in the conduct of the trade or business of the qualified business, as defined in section 116J.8738. This exemption applies regardless of whether the purchases are made by the business or a contractor.

(c) The exemptions under this subdivision apply to a local sales and use tax.

(d) The tax on purchases imposed under this subdivision must be imposed and collected as if the rate under section 297A.62 applied, and then refunded in the manner provided in section 297A.75. The total amount refunded for a facility over the certification period is limited to the amount listed in the business subsidy agreement. No more than \$7,000,000 may be refunded in a fiscal year for all purchases under this subdivision. Refunds must be allocated on a first-come, first-served basis. If more than \$7,000,000 of eligible claims are made in a fiscal year, claims by qualified businesses carry over to the next fiscal year, and the commissioner must first allocate refunds to qualified businesses eligible for a refund in the preceding fiscal year. Any portion of the balance of funds allocated for refunds under this paragraph does not cancel and shall be carried forward to and available for refunds in subsequent fiscal years. Notwithstanding section 297A.75, subdivision 4, for an eligible refund claim that carries over to a subsequent fiscal year, the interest on the amount carried over must be paid on the refund no sooner than from 90 days after July 1 of the fiscal year in which funds are available for the eligible claim.

**297A.69 AGRICULTURAL EXEMPTIONS.**

Subdivision 1. **Scope.** The gross receipts from the sale of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

Subd. 2. **Materials consumed in agricultural production.** Materials stored, used, or consumed in agricultural production of personal property intended to be sold ultimately at retail are exempt, whether or not the item becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

(1) feeds, seeds, trees, fertilizers, and herbicides, including when purchased for use by farmers in a federal or state farm or conservation program;

(2) materials sold to a veterinarian to be used or consumed in the care, medication, and treatment of agricultural production animals and horses;

(3) chemicals, including chemicals used for cleaning food processing machinery and equipment;

(4) materials, including chemicals, fuels, and electricity purchased by persons engaged in agricultural production to treat waste generated as a result of the production process;

(5) fuels, electricity, gas, and steam used or consumed in the production process, including electricity, gas, or steam used for space heating, cooling, or lighting of facilities housing agricultural animals;

(6) petroleum products and lubricants;

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(7) packaging materials, including returnable containers used in packaging food and beverage products; and

(8) accessory tools and equipment that are separate detachable units with an ordinary useful life of less than 12 months used in producing a direct effect upon the product. Machinery, equipment, implements, tools, accessories, appliances, contrivances, and furniture and fixtures, except those listed in this clause are not included within this exemption.

Subd. 3. **Repair and replacement parts.** Repair and replacement parts, except tires, used for maintenance or repair of farm machinery, logging equipment, and aquaculture production equipment are exempt, if the part replaces a machinery part assigned a specific or generic part number by the manufacturer of the machinery.

Subd. 4. **Machinery, equipment, and fencing.** The following machinery, equipment, and fencing is exempt:

- (1) farm machinery;
- (2) logging equipment, including chain saws used for commercial logging;
- (3) fencing used for the containment of farmed cervidae, as defined in section 35.153, subdivision 3;
- (4) primary and backup generator units used to generate electricity for the purpose of operating farm machinery, aquacultural production equipment, or logging equipment, or providing light or space heating necessary for the production of livestock, dairy animals, dairy products, or poultry and poultry products; and
- (5) aquaculture production equipment.

Subd. 6. **Horses; related materials.** (a) Horses, including racehorses, are exempt.

(b) Materials, including feed and bedding, used or consumed in the breeding, raising, owning, boarding, and keeping of horses are exempt. Machinery, equipment, implements, tools, appliances, furniture, and fixtures used in the breeding, raising, owning, boarding, and keeping of horses are not included within this exemption.

Subd. 7. **Feed for poultry raised for human consumption.** Poultry feed is exempt if the poultry is raised for human consumption.

**297A.70 EXEMPTIONS FOR GOVERNMENTS AND NONPROFIT GROUPS.**

Subdivision 1. **Scope.** (a) To the extent provided in this section, the gross receipts from sales of items to or by, and storage, distribution, use, or consumption of items by the organizations or units of local government listed in this section are specifically exempted from the taxes imposed by this chapter.

(b) Notwithstanding any law to the contrary enacted before 1992, only sales to governments and political subdivisions listed in this section are exempt from the taxes imposed by this chapter.

(c) "Sales" includes purchases under an installment contract or lease purchase agreement under section 465.71.

Subd. 2. **Sales to government.** (a) All sales, except those listed in paragraph (b), to the following governments and political subdivisions, or to the listed agencies or instrumentalities of governments and political subdivisions, are exempt:

- (1) the United States and its agencies and instrumentalities;
- (2) school districts, local governments, the University of Minnesota, state universities, community colleges, technical colleges, state academies, the Perpich Minnesota Center for Arts Education, and an instrumentality of a political subdivision that is accredited as an optional/special function school by the North Central Association of Colleges and Schools;
- (3) hospitals and nursing homes owned and operated by political subdivisions of the state of tangible personal property and taxable services used at or by hospitals and nursing homes;
- (4) notwithstanding paragraph (d), the sales and purchases by the Metropolitan Council of vehicles and repair parts to equip operations provided for in section 473.4051 are exempt through December 31, 2016;
- (5) other states or political subdivisions of other states, if the sale would be exempt from taxation if it occurred in that state; and
- (6) public libraries, public library systems, multicounty, multitype library systems as defined in section 134.001, county law libraries under chapter 134A, state agency libraries, the state library under section 480.09, and the Legislative Reference Library.

(b) This exemption does not apply to the sales of the following products and services:

- (1) building, construction, or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed



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maximum price covering both labor and materials for use in the construction, alteration, or repair of a building or facility;

(2) construction materials purchased by tax exempt entities or their contractors to be used in constructing buildings or facilities which will not be used principally by the tax exempt entities;

(3) the leasing of a motor vehicle as defined in section 297B.01, subdivision 11, except for leases entered into by the United States or its agencies or instrumentalities;

(4) lodging as defined under section 297A.61, subdivision 3, paragraph (g), clause (2), and prepared food, candy, soft drinks, and alcoholic beverages as defined in section 297A.67, subdivision 2, except for lodging, prepared food, candy, soft drinks, and alcoholic beverages purchased directly by the United States or its agencies or instrumentalities; or

(5) goods or services purchased by a local government as inputs to a liquor store, gas or electric utility, solid waste hauling service, solid waste recycling service, landfill, golf course, marina, campground, cafe, or laundromat.

(c) As used in this subdivision, "school districts" means public school entities and districts of every kind and nature organized under the laws of the state of Minnesota, and any instrumentality of a school district, as defined in section 471.59.

(d) For purposes of the exemption granted under this subdivision, "local governments" has the following meaning:

(1) for the period prior to January 1, 2017, local governments means statutory or home rule charter cities, counties, and townships; and

(2) beginning January 1, 2017, local governments means statutory or home rule charter cities, counties, and townships; special districts as defined under section 6.465; any instrumentality of a statutory or home rule charter city, county, or township as defined in section 471.59; and any joint powers board or organization created under section 471.59.

**Subd. 3. Sales of certain goods and services to government.** (a) The following sales to or use by the specified governments and political subdivisions of the state are exempt:

(1) repair and replacement parts for emergency rescue vehicles, fire trucks, and fire apparatus to a political subdivision;

(2) machinery and equipment, except for motor vehicles, used directly for mixed municipal solid waste management services at a solid waste disposal facility as defined in section 115A.03, subdivision 10;

(3) chore and homemaking services to a political subdivision of the state to be provided to elderly or disabled individuals;

(4) telephone services to the Office of MN.IT Services that are used to provide telecommunications services through the MN.IT services revolving fund;

(5) firefighter personal protective equipment as defined in paragraph (b), if purchased or authorized by and for the use of an organized fire department, fire protection district, or fire company regularly charged with the responsibility of providing fire protection to the state or a political subdivision;

(6) bullet-resistant body armor that provides the wearer with ballistic and trauma protection, if purchased by a law enforcement agency of the state or a political subdivision of the state, or a licensed peace officer, as defined in section 626.84, subdivision 1;

(7) motor vehicles purchased or leased by political subdivisions of the state if the vehicles are exempt from registration under section 168.012, subdivision 1, paragraph (b), exempt from taxation under section 473.448, or exempt from the motor vehicle sales tax under section 297B.03, clause (12);

(8) equipment designed to process, dewater, and recycle biosolids for wastewater treatment facilities of political subdivisions, and materials incidental to installation of that equipment;

(9) the removal of trees, bushes, or shrubs for the construction and maintenance of roads, trails, or firebreaks when purchased by an agency of the state or a political subdivision of the state;

(10) purchases by the Metropolitan Council or the Department of Transportation of vehicles and repair parts to equip operations provided for in section 174.90, including, but not limited to, the Northstar Corridor Rail project; and

(11) purchases of water used directly in providing public safety services by an organized fire department, fire protection district, or fire company regularly charged with the responsibility of providing fire protection to the state or a political subdivision.

(b) For purposes of this subdivision, "firefighters personal protective equipment" means helmets, including face shields, chin straps, and neck liners; bunker coats and pants, including pant suspenders; boots; gloves; head covers or hoods; wildfire jackets; protective coveralls; goggles; self-contained breathing apparatus; canister filter masks; personal alert safety systems; spanner belts; optical or thermal imaging search devices; and all safety equipment required by the Occupational Safety and Health Administration.

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(c) For purchases of items listed in paragraph (a), clause (10), the tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 4. **Sales to nonprofit groups.** (a) All sales, except those listed in paragraph (b), to the following "nonprofit organizations" are exempt:

(1) a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes if the item purchased is used in the performance of charitable, religious, or educational functions; and

(2) any senior citizen group or association of groups that:

(i) in general limits membership to persons who are either age 55 or older, or physically disabled;

(ii) is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes, not including housing, no part of the net earnings of which inures to the benefit of any private shareholders; and

(iii) is an exempt organization under section 501(c) of the Internal Revenue Code.

For purposes of this subdivision, charitable purpose includes the maintenance of a cemetery owned by a religious organization.

(b) This exemption does not apply to the following sales:

(1) building, construction, or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration, or repair of a building or facility;

(2) construction materials purchased by tax-exempt entities or their contractors to be used in constructing buildings or facilities that will not be used principally by the tax-exempt entities;

(3) lodging as defined under section 297A.61, subdivision 3, paragraph (g), clause (2), and prepared food, candy, soft drinks, and alcoholic beverages as defined in section 297A.67, subdivision 2, except wine purchased by an established religious organization for sacramental purposes or as allowed under subdivision 9a; and

(4) leasing of a motor vehicle as defined in section 297B.01, subdivision 11, except as provided in paragraph (c).

(c) This exemption applies to the leasing of a motor vehicle as defined in section 297B.01, subdivision 11, only if the vehicle is:

(1) a truck, as defined in section 168.002, a bus, as defined in section 168.002, or a passenger automobile, as defined in section 168.002, if the automobile is designed and used for carrying more than nine persons including the driver; and

(2) intended to be used primarily to transport tangible personal property or individuals, other than employees, to whom the organization provides service in performing its charitable, religious, or educational purpose.

(d) A limited liability company also qualifies for exemption under this subdivision if (1) it consists of a sole member that would qualify for the exemption, and (2) the items purchased qualify for the exemption.

Subd. 5. **Veterans groups.** Sales to an organization of military service veterans or an auxiliary unit of an organization of military service veterans are exempt if:

(1) the organization or auxiliary unit is organized within the state of Minnesota and is exempt from federal taxation under section 501(c), clause (19), of the Internal Revenue Code; and

(2) the tangible personal property or services are for charitable, civic, educational, or nonprofit uses and not for social, recreational, pleasure, or profit uses.

Subd. 6. **Ambulances.** The lease of a motor vehicle by an ambulance service licensed under section 144E.10 that is equipped and specifically intended for emergency response or for providing ambulance services is exempt.

Subd. 7. **Hospitals, outpatient surgical centers, and critical access dental providers.** (a) Sales, except for those listed in paragraph (d), to a hospital are exempt, if the items purchased are used in providing hospital services. For purposes of this subdivision, "hospital" means a hospital organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and licensed under chapter 144 or by any other jurisdiction, and "hospital services" are services authorized or required to be performed by a "hospital" under chapter 144.

(b) Sales, except for those listed in paragraph (d), to an outpatient surgical center are exempt, if the items purchased are used in providing outpatient surgical services. For purposes of this subdivision, "outpatient surgical center" means an outpatient surgical center organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and licensed under chapter 144 or by any other jurisdiction. For the purposes of this subdivision, "outpatient surgical services" means: (1) services authorized or required

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to be performed by an outpatient surgical center under chapter 144; and (2) urgent care. For purposes of this subdivision, "urgent care" means health services furnished to a person whose medical condition is sufficiently acute to require treatment unavailable through, or inappropriate to be provided by, a clinic or physician's office, but not so acute as to require treatment in a hospital emergency room.

(c) Sales, except for those listed in paragraph (d), to a critical access dental provider are exempt, if the items purchased are used in providing critical access dental care services. For the purposes of this subdivision, "critical access dental provider" means a dentist or dental clinic that qualifies under section 256B.76, subdivision 4, paragraph (b), and, in the previous calendar year, had no more than 15 percent of its patients covered by private dental insurance.

(d) This exemption does not apply to the following products and services:

(1) purchases made by a clinic, physician's office, or any other medical facility not operating as a hospital, outpatient surgical center, or critical access dental provider, even though the clinic, office, or facility may be owned and operated by a hospital, outpatient surgical center, or critical access dental provider;

(2) sales under section 297A.61, subdivision 3, paragraph (g), clause (2), and prepared food, candy, and soft drinks;

(3) building and construction materials used in constructing buildings or facilities that will not be used principally by the hospital, outpatient surgical center, or critical access dental provider;

(4) building, construction, or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration, or repair of a hospital, outpatient surgical center, or critical access dental provider; or

(5) the leasing of a motor vehicle as defined in section 297B.01, subdivision 11.

(e) A limited liability company also qualifies for exemption under this subdivision if (1) it consists of a sole member that would qualify for the exemption, and (2) the items purchased qualify for the exemption.

(f) An entity that contains both a hospital and a nonprofit unit may claim this exemption on purchases made for both the hospital and nonprofit unit provided that:

(1) the nonprofit unit would have qualified for exemption under subdivision 4; and

(2) the items purchased would have qualified for the exemption.

**Subd. 8. Regionwide public safety radio communication system; products and services.** Products and services including, but not limited to, end user equipment used for construction, ownership, operation, maintenance, and enhancement of the backbone system of the regionwide public safety radio communication system established under sections 403.21 to 403.40, are exempt. For purposes of this subdivision, backbone system is defined in section 403.21, subdivision 9. This subdivision is effective for purchases, sales, storage, use, or consumption for use in the first and second phases of the system, as defined in section 403.21, subdivisions 3, 10, and 11, that portion of the third phase of the system that is located in the southeast district of the State Patrol and the counties of Benton, Sherburne, Stearns, and Wright, and that portion of the system that is located in Itasca County.

**Subd. 9. Sacramental wine.** Wine for sacramental purposes in religious ceremonies, as described in section 340A.316, is exempt if the wine is purchased from a nonprofit religious organization meeting the requirements of subdivision 4 or from a person authorized to import sacramental wine without a license as provided in section 340A.316.

**Subd. 9a. Established religious orders.** (a) Sales of lodging, prepared food, candy, soft drinks, and alcoholic beverages at noncatered events between an established religious order and an affiliated institution of higher education are exempt.

(b) For purposes of this subdivision, "established religious order" means an organization directly or indirectly under the control or supervision of a church or convention or association of churches, where members of the organization:

(1) normally live together as part of a community;

(2) make long-term commitments to live under a strict set of moral and spiritual rules; and

(3) work or engage full time in a combination of prayer, religious study, church reform or renewal, or other religious, educational, or charitable goals of the organization.

(c) For purposes of this subdivision, an institution of higher education is "affiliated" with an established religious order if members of the religious order are represented on the governing board of the institution of higher education and the two organizations share campus space and common facilities.

**Subd. 10. Nonprofit tickets or admissions.** (a) Tickets or admissions to an event are exempt if all the gross receipts are recorded as such, in accordance with generally accepted accounting principles, on the books of one or more organizations whose primary mission is to

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provide an opportunity for citizens of the state to participate in the creation, performance, or appreciation of the arts, and provided that each organization is:

(1) an organization described in section 501(c)(3) of the Internal Revenue Code in which voluntary contributions make up at least five percent of the organization's annual revenue in its most recently completed 12-month fiscal year, or in the current year if the organization has not completed a 12-month fiscal year;

(2) a municipal board that promotes cultural and arts activities; or

(3) the University of Minnesota, a state college and university, or a private nonprofit college or university provided that the event is held at a facility owned by the educational institution holding the event.

The exemption only applies if the entire proceeds, after reasonable expenses, are used solely to provide opportunities for citizens of the state to participate in the creation, performance, or appreciation of the arts.

(b) Tickets or admissions to the premises of the Minnesota Zoological Garden are exempt, provided that the exemption under this paragraph does not apply to tickets or admissions to performances or events held on the premises unless the performance or event is sponsored and conducted exclusively by the Minnesota Zoological Board or employees of the Minnesota Zoological Garden.

Subd. 11. **School tickets or admissions.** Tickets or admissions to regular season school games, events, and activities, and to games, events, and activities sponsored by the Minnesota State High School League under chapter 128C, are exempt. For purposes of this subdivision, "school" has the meaning given it in section 120A.22, subdivision 4.

Subd. 12. **YMCA, YWCA, and JCC memberships.** The sale of memberships, meaning both onetime initiation fees and periodic membership dues, to an association incorporated under section 315.44 or an organization defined under section 315.51, are exempt. However, all separate charges made for the privilege of having access to and the use of the association's sports and athletic facilities are taxable.

Subd. 13. **Fund-raising sales by or for nonprofit groups.** (a) The following sales by the specified organizations for fund-raising purposes are exempt, subject to the limitations listed in paragraph (b):

(1) all sales made by a nonprofit organization that exists solely for the purpose of providing educational or social activities for young people primarily age 18 and under;

(2) all sales made by an organization that is a senior citizen group or association of groups if (i) in general it limits membership to persons age 55 or older; (ii) it is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes; and (iii) no part of its net earnings inures to the benefit of any private shareholders;

(3) the sale or use of tickets or admissions to a golf tournament held in Minnesota if the beneficiary of the tournament's net proceeds qualifies as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and

(4) sales of candy sold for fund-raising purposes by a nonprofit organization that provides educational and social activities primarily for young people age 18 and under.

(b) The exemptions listed in paragraph (a) are limited in the following manner:

(1) the exemption under paragraph (a), clauses (1) and (2), applies only to the first \$20,000 of the gross annual receipts of the organization from fund-raising; and

(2) the exemption under paragraph (a), clause (1), does not apply if the sales are derived from admission charges or from activities for which the money must be deposited with the school district treasurer under section 123B.49, subdivision 2, or be recorded in the same manner as other revenues or expenditures of the school district under section 123B.49, subdivision 4.

(c) Sales of tangible personal property and services are exempt if the entire proceeds, less the necessary expenses for obtaining the property or services, will be contributed to a registered combined charitable organization described in section 43A.50, to be used exclusively for charitable, religious, or educational purposes, and the registered combined charitable organization has given its written permission for the sale. Sales that occur over a period of more than 24 days per year are not exempt under this paragraph.

(d) For purposes of this subdivision, a club, association, or other organization of elementary or secondary school students organized for the purpose of carrying on sports, educational, or other extracurricular activities is a separate organization from the school district or school for purposes of applying the \$20,000 limit.

Subd. 14. **Fund-raising events sponsored by nonprofit groups.** (a) Sales of tangible personal property or services at, and admission charges for fund-raising events sponsored by, a nonprofit organization are exempt if:

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(1) all gross receipts are recorded as such, in accordance with generally accepted accounting practices, on the books of the nonprofit organization; and

(2) the entire proceeds, less the necessary expenses for the event, will be used solely and exclusively for charitable, religious, or educational purposes. Exempt sales include the sale of prepared food, candy, and soft drinks at the fund-raising event.

(b) This exemption is limited in the following manner:

(1) it does not apply to admission charges for events involving bingo or other gambling activities or to charges for use of amusement devices involving bingo or other gambling activities;

(2) all gross receipts are taxable if the profits are not used solely and exclusively for charitable, religious, or educational purposes;

(3) it does not apply unless the organization keeps a separate accounting record, including receipts and disbursements from each fund-raising event that documents all deductions from gross receipts with receipts and other records;

(4) it does not apply to any sale made by or in the name of a nonprofit corporation as the active or passive agent of a person that is not a nonprofit corporation;

(5) all gross receipts are taxable if fund-raising events exceed 24 days per year;

(6) it does not apply to fund-raising events conducted on premises leased for more than five days but less than 30 days; and

(7) it does not apply if the risk of the event is not borne by the nonprofit organization and the benefit to the nonprofit organization is less than the total amount of the state and local tax revenues forgone by this exemption.

(c) For purposes of this subdivision, a "nonprofit organization" means any unit of government, corporation, society, association, foundation, or institution organized and operated for charitable, religious, educational, civic, fraternal, and senior citizens' or veterans' purposes, no part of the net earnings of which inures to the benefit of a private individual.

(d) For purposes of this subdivision, "fund-raising events" means activities of limited duration, not regularly carried out in the normal course of business, that attract patrons for community, social, and entertainment purposes, such as auctions, bake sales, ice cream socials, block parties, carnivals, competitions, concerts, concession stands, craft sales, bazaars, dinners, dances, door-to-door sales of merchandise, fairs, fashion shows, festivals, galas, special event workshops, sporting activities such as marathons and tournaments, and similar events. Fund-raising events do not include the operation of a regular place of business in which services are provided or sales are made during regular hours such as bookstores, thrift stores, gift shops, restaurants, ongoing Internet sales, regularly scheduled classes, or other activities carried out in the normal course of business.

Subd. 15. **Statewide amateur athletic games.** Notwithstanding section 297A.61, subdivision 3, or any other provision of this chapter, the gross receipts from the following sales made to or by a nonprofit corporation designated by the Minnesota Amateur Sports Commission to conduct a series of statewide amateur athletic games and related events, workshops, and clinics are exempt:

(1) sales of tangible personal property to or the storage, use, or other consumption of tangible personal property by the nonprofit corporation; and

(2) sales of tangible personal property, admission charges, and sales of prepared food, candy, and soft drinks by the nonprofit corporation at fund-raising events, athletic events, or athletic facilities.

Subd. 16. **Camp fees.** Fees to camps or other recreation facilities are exempt for:

(1) services primarily for children, adults accompanying children, or persons with disabilities; or

(2) educational or religious activities;

and the camp or facilities are owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code.

Subd. 17. **Private communication service for State Lottery.** Private communication service, as defined in section 297A.61, subdivision 26, is exempt if the service is purchased by an agent acting on behalf of the State Lottery.

Subd. 18. **Nursing homes and boarding care homes.** (a) All sales, except those listed in paragraph (b), to a nursing home licensed under section 144A.02 or a boarding care home certified as a nursing facility under title 19 of the Social Security Act are exempt if the facility:

(1) is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code; and

(2) is certified to participate in the medical assistance program under title 19 of the Social Security Act, or certifies to the commissioner that it does not discharge residents due to the inability to pay.

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(b) This exemption does not apply to the following sales:

(1) building, construction, or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration, or repair of a building or facility;

(2) construction materials purchased by tax-exempt entities or their contractors to be used in constructing buildings or facilities that will not be used principally by the tax-exempt entities;

(3) lodging as defined under section 297A.61, subdivision 3, paragraph (g), clause (2), and prepared food, candy, soft drinks, and alcoholic beverages as defined in section 297A.67, subdivision 2; and

(4) leasing of a motor vehicle as defined in section 297B.01, subdivision 11, except as provided in paragraph (c).

(c) This exemption applies to the leasing of a motor vehicle as defined in section 297B.01, subdivision 11, only if the vehicle is:

(1) a truck, as defined in section 168.002; a bus, as defined in section 168.002; or a passenger automobile, as defined in section 168.002, if the automobile is designed and used for carrying more than nine persons including the driver; and

(2) intended to be used primarily to transport tangible personal property or residents of the nursing home or boarding care home.

Subd. 19. **Nonprofit snowmobile clubs; machinery and equipment.** Sales of tangible personal property to a nonprofit snowmobile club that is used primarily and directly for the grooming of state or grant-in-aid snowmobile trails are exempt. The exemption applies to grooming machines, attachments, other associated accessories, and repair parts. A nonprofit snowmobile club is eligible for the exemption under this subdivision if it received, in the current year or in the previous three-year period, a state grant-in-aid maintenance and grooming grant administered by the Department of Natural Resources by applying for the grant with a local unit of government sponsor.

**297A.71 CONSTRUCTION EXEMPTIONS.**

Subdivision 1. **Scope.** The gross receipts from the sale of, and storage, distribution, use, or consumption of the tangible personal property contained in this section are specifically exempted from the taxes imposed by this chapter. Building materials, equipment, and supplies and other items exempt under this section are exempt regardless of whether purchased by the owner or a contractor, subcontractor, or builder.

Subd. 3. **Correctional facilities.** Building materials and supplies for constructing or improving an adult or juvenile correctional facility by a county, home rule charter city, or statutory city are exempt if the project is mandated by state or federal law, rule, or regulation. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 6. **Business incubator and industrial park.** Building materials and supplies for construction of a facility that includes a business incubator and industrial park are exempt if the facility:

(1) is owned and operated by a nonprofit charitable organization that qualifies for tax exemption under section 501(c)(3) of the Internal Revenue Code;

(2) is used for the development of nonretail businesses, offering access to equipment, space, services, and advice to the tenant businesses, for the purpose of encouraging economic development and job creation in the area served by the organization, and emphasizes development of businesses that manufacture products from materials found in the waste stream, or manufacture alternative energy and conservation systems, or make use of emerging environmental technologies;

(3) includes in its structure systems of material and energy exchanges that use waste products from one industrial process as sources of energy and material for other processes; and

(4) makes use of solar and wind energy technology and incorporates salvaged materials in its construction.

A limited liability company also qualifies for exemption under this subdivision if (1) it consists of a sole member that would qualify for the exemption, and (2) the items purchased qualify for the exemption.

Subd. 8. **Wood waste cogeneration facility.** Building materials and supplies for constructing, equipping, or modifying a district heating and cooling system cogeneration facility are exempt if the facility:

(1) utilizes wood waste as a primary fuel source; and

(2) satisfies the requirements of the biomass mandate in section 216B.2424, subdivision 5.

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Subd. 11. **Building materials; disabled veterans.** Building materials to be used in the construction or remodeling of a residence are exempt when the construction or remodeling is financed in whole or in part by the United States in accordance with United States Code, title 38, sections 2101 to 2105. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 12. **Chair lifts, ramps, elevators.** Elevators and building materials used to install or construct chair lifts, ramps, and elevators are exempt, if they are authorized by a physician and installed in or attached to the owner's homestead. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 13. **Agriculture processing facility materials.** Building materials and supplies for constructing an agriculture processing facility as defined in section 469.1811 in which the total capital investment in the processing facility is expected to exceed \$100,000,000 are exempt. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

Subd. 14. **Mineral production facilities.** Building materials, equipment, and supplies used for the construction of the following mineral production facilities are exempt.

The mineral production facilities that qualify for this exemption are:

(1) a value added iron products plant, which may be either a new plant or a facility incorporated into an existing plant that produces iron upgraded to a minimum of 75 percent iron content or any iron alloy with a total minimum metallic content of 90 percent;

(2) a facility used for the manufacture of fluxed taconite pellets as defined in section 298.24;

(3) a new capital project that has a total cost of over \$40,000,000 that is directly related to production, cost, or quality at an existing taconite facility that does not qualify under clause (1) or (2); and

(4) a new mine or minerals processing plant for any mineral subject to the net proceeds tax imposed under section 298.015.

The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

Subd. 22. **Materials used to make residential property disabled accessible.** Building materials and equipment sold to, or stored, used, or consumed by, a nonprofit organization are exempt if:

(1) the materials and equipment are used or incorporated into modifying an existing residential structure to make it disabled accessible; and

(2) the materials and equipment used in the modification would qualify for an exemption under either subdivision 11 or 12 if made by the current owner of the residence.

For purposes of this subdivision, "nonprofit organization" means any nonprofit corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, educational, or civic purposes; or a veterans' group exempt from federal taxation under section 501(c), clause (19), of the Internal Revenue Code.

Subd. 23. **Construction materials for qualified low-income housing projects.** (a) Purchases of materials and supplies used or consumed in and equipment incorporated into the construction, improvement, or expansion of qualified low-income housing projects are exempt from the tax imposed under this chapter if the owner of the qualified low-income housing project is:

(1) the public housing agency or housing and redevelopment authority of a political subdivision;

(2) an entity exercising the powers of a housing and redevelopment authority within a political subdivision;

(3) a limited partnership in which the sole or managing general partner is an authority under clause (1) or an entity under clause (2), (4), or (5);

(4) a nonprofit corporation subject to the provisions of chapter 317A, and qualifying under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(5) a limited liability company if it consists of a sole member that is an entity under clause (4); or

(6) an owner entity, as defined in Code of Federal Regulations, title 24, part 941.604, for a qualified low-income housing project described in paragraph (b), clause (5).

This exemption applies regardless of whether the purchases are made by the owner of the facility or a contractor.

(b) For purposes of this exemption, "qualified low-income housing project" means:

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- (1) a housing or mixed use project in which at least 20 percent of the residential units are qualifying low-income rental housing units as defined in section 273.128;
  - (2) a federally assisted low-income housing project financed by a mortgage insured or held by the United States Department of Housing and Urban Development under United States Code, title 12, section 1701s, 1715l(d)(3), 1715l(d)(4), or 1715z-1; United States Code, title 42, section 1437f; the Native American Housing Assistance and Self-Determination Act, United States Code, title 25, section 4101 et seq.; or any similar successor federal low-income housing program;
  - (3) a qualified low-income housing project as defined in United States Code, title 26, section 42(g), meeting all of the requirements for a low-income housing credit under section 42 of the Internal Revenue Code regardless of whether the project actually applies for or receives a low-income housing credit;
  - (4) a project that will be operated in compliance with Internal Revenue Service revenue procedure 96-32; or
  - (5) a housing or mixed use project in which all or a portion of the residential units are subject to the requirements of section 5 of the United States Housing Act of 1937.
- (c) For a project, a portion of which is not used for low-income housing units, the amount of purchases that are exempt under this subdivision must be determined by multiplying the total purchases, as specified in paragraph (a), by the ratio of:
- (1) the total gross square footage of units subject to the income limits under section 273.128, the financing for the project, the federal low-income housing tax credit, revenue procedure 96-32, or section 5 of the United States Housing Act of 1937, as applicable to the project; and
  - (2) the total gross square footage of all units in the project.
- (d) The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and then refunded in the manner provided in section 297A.75.

Subd. 34. **Waste recovery facility.** Materials and supplies used or consumed in, and equipment incorporated into, the construction, improvement, or expansion of a waste-to-energy resource recovery facility are exempt if the facility uses biomass or mixed municipal solid waste as a primary fuel to generate steam or electricity.

Subd. 35. **Municipal utilities.** Materials and supplies used or consumed in, and equipment incorporated into, the construction, improvement, or expansion of electric generation and related facilities used pursuant to a joint power purchase agreement to meet the biomass energy mandate in section 216B.2424 are exempt if the owner or owners of the facilities are a municipal electric utility or utilities or a joint venture of municipal electric utilities. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded under section 297A.75.

Subd. 40. **Construction materials; Central Corridor light rail transit.** Materials and supplies used or consumed in, and equipment incorporated into, the construction or improvement of the Central Corridor light rail transit line and associated facilities including, but not limited to, stations, park-and-ride facilities, and maintenance facilities, are exempt. The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75. Refunds must not be applied for or issued until after July 1, 2009.

Subd. 42. **Aerospace defense manufacturing facility.** (a) Materials and supplies used or consumed in, capital equipment incorporated into, and privately owned infrastructure in support of the construction, improvement, or expansion of an aerospace defense manufacturing facility are exempt if:

- (1) the facility is used for the manufacturing of aerospace or defense-related sensors and the production of micro-electro-mechanical systems; and

- (2) the total capital investment made at the facility is at least \$59,000,000.

(b) The tax must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and refunded in the manner provided in section 297A.75, only after the following criteria have been met:

- (1) a refund may not be issued until the owner of the aerospace defense manufacturing facility has received certification from the Department of Employment and Economic Development that the aerospace defense manufacturing facility employs no less than 1,653 full-time equivalent workers within the state, and has made a total capital investment of at least \$59,000,000;

- (2) for each year that the owner of the aerospace defense manufacturing facility receives certification from the Department of Employment and Economic Development that no less than 1,653 full-time equivalent worker residents are employed workers within the state, the refund may be issued to the owner of the aerospace defense manufacturing facility at a rate of 25 percent



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of the total allowable refund payable to date, provided that the Department of Employment and Economic Development continues to certify that no less than 1,653 full-time equivalent workers are employed workers within the state, the commissioner of revenue may make annual payments of the remaining refund until all of the refund has been paid; and

(3) to receive the refund, the owner of the aerospace defense manufacturing facility must initially apply to the Department of Employment and Economic Development for certification no later than one year from the final completion date of construction of the expansion of the aerospace defense manufacturing facility.

Subd. 43. **Building materials; football stadium.** Materials and supplies used or consumed in, and equipment incorporated into, the construction or improvement of the football stadium and stadium infrastructure as defined in section 473J.03, subdivisions 8 and 10, are exempt. This subdivision expires one year after the date that the first National Football League game is played in the stadium for materials, supplies, and equipment used in the construction and equipping of the stadium, and five years after the issuance of the first bonds under section 16A.965 for materials, supplies, and equipment used in the public infrastructure.

Subd. 44. **Building materials, capital projects.** Materials and supplies used or consumed in and equipment incorporated into the construction or improvement of a capital project funded partially or wholly under section 297A.9905 are exempt, provided that the project has a total construction cost of at least \$40,000,000 within a 24-month period. The tax on purchases exempt under this provision must be imposed and collected as if the rate under section 297A.62, subdivision 1, applied and then refunded in the manner provided in section 297A.75.

Subd. 45. **Biopharmaceutical manufacturing facility.** (a) Materials and supplies used or consumed in, capital equipment incorporated into, and privately owned infrastructure in support of the construction, improvement, or expansion of a biopharmaceutical manufacturing facility in the state are exempt if the following criteria are met:

(1) the facility is used for the manufacturing of biologics;  
(2) the total capital investment made at the facility exceeds \$50,000,000; and  
(3) the facility creates and maintains at least 190 full-time equivalent positions at the facility. These positions must be new jobs in Minnesota and not the result of relocating jobs that currently exist in Minnesota.

(b) The tax must be imposed and collected as if the rate under section 297A.62 applied, and refunded in the manner provided in section 297A.75.

(c) To be eligible for a refund, the owner of the biopharmaceutical manufacturing facility must:

(1) initially apply to the Department of Employment and Economic Development for certification no later than one year from the final completion date of construction, improvement, or expansion of the facility; and

(2) for each year that the owner of the biopharmaceutical manufacturing facility applies for a refund, the owner must have received written certification from the Department of Employment and Economic Development that the facility has met the criteria of paragraph (a).

(d) The refund is to be paid annually at a rate of 25 percent of the total allowable refund payable to date, with the commissioner making annual payments of the remaining refund until all of the refund has been paid.

(e) For purposes of this subdivision, "biopharmaceutical" and "biologics" are interchangeable and mean medical drugs or medicinal preparations produced using technology that uses biological systems, living organisms, or derivatives of living organisms to make or modify products or processes for specific use. The medical drugs or medicinal preparations include but are not limited to proteins, antibodies, nucleic acids, and vaccines.

Subd. 46. **Research and development facility.** Materials and supplies used or consumed in, and equipment incorporated into, the construction or improvement of a research and development facility that has laboratory space of at least 400,000 square feet and utilizes both high-intensity and low-intensity laboratories, provided that the project has a total construction cost of at least \$140,000,000 within a 24-month period. The tax on purchases imposed under this subdivision must be imposed and collected as if the rate under section 297A.62 applied and then refunded in the manner provided in section 297A.75.

Subd. 47. **Industrial measurement manufacturing and controls facility.** (a) Materials and supplies used or consumed in, capital equipment incorporated into, fixtures installed in, and privately owned infrastructure in support of the construction, improvement, or expansion of an industrial measurement manufacturing and controls facility are exempt if:

(1) the total capital investment made at the facility is at least \$60,000,000;  
(2) the facility employs at least 250 full-time equivalent employees that are not employees currently employed by the company in the state; and

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(3) the Department of Employment and Economic Development determines that the expansion, remodeling, or improvement of the facility has a significant impact on the state economy.

(b) The tax must be imposed and collected as if the rate under section 297A.62 applied and refunded in the manner provided in section 297A.75, only after the following criteria are met:

(1) a refund may not be issued until the owner of the facility has received certification from the Department of Employment and Economic Development that the company meets the requirements in paragraph (a); and

(2) to receive the refund, the owner of the industrial measurement manufacturing and controls facility must initially apply to the Department of Employment and Economic Development for certification no later than one year from the final completion date of construction, improvement, or expansion of the industrial measurement manufacturing and controls facility.

Subd. 48. **Construction materials, public infrastructure related to the destination medical center.** Materials and supplies used in, and equipment incorporated into, the construction and improvement of publicly owned buildings and infrastructure included in the development plan adopted under section 469.43, and financed with public funds, are exempt.

**297A.75 REFUND; APPROPRIATION.**

Subdivision 1. **Tax collected.** The tax on the gross receipts from the sale of the following exempt items must be imposed and collected as if the sale were taxable and the rate under section 297A.62, subdivision 1, applied. The exempt items include:

(1) building materials for an agricultural processing facility exempt under section 297A.71, subdivision 13;

(2) building materials for mineral production facilities exempt under section 297A.71, subdivision 14;

(3) building materials for correctional facilities under section 297A.71, subdivision 3;

(4) building materials used in a residence for disabled veterans exempt under section 297A.71, subdivision 11;

(5) elevators and building materials exempt under section 297A.71, subdivision 12;

(6) materials and supplies for qualified low-income housing under section 297A.71, subdivision 23;

(7) materials, supplies, and equipment for municipal electric utility facilities under section 297A.71, subdivision 35;

(8) equipment and materials used for the generation, transmission, and distribution of electrical energy and an aerial camera package exempt under section 297A.68, subdivision 37;

(9) commuter rail vehicle and repair parts under section 297A.70, subdivision 3, paragraph (a), clause (10);

(10) materials, supplies, and equipment for construction or improvement of projects and facilities under section 297A.71, subdivision 40;

(11) materials, supplies, and equipment for construction, improvement, or expansion of:

(i) an aerospace defense manufacturing facility exempt under section 297A.71, subdivision 42;

(ii) a biopharmaceutical manufacturing facility exempt under section 297A.71, subdivision 45;

(iii) a research and development facility exempt under section 297A.71, subdivision 46; and

(iv) an industrial measurement manufacturing and controls facility exempt under section 297A.71, subdivision 47;

(12) enterprise information technology equipment and computer software for use in a qualified data center exempt under section 297A.68, subdivision 42;

(13) materials, supplies, and equipment for qualifying capital projects under section 297A.71, subdivision 44;

(14) items purchased for use in providing critical access dental services exempt under section 297A.70, subdivision 7, paragraph (c); and

(15) items and services purchased under a business subsidy agreement for use or consumption primarily in greater Minnesota exempt under section 297A.68, subdivision 44.

Subd. 2. **Refund; eligible persons.** Upon application on forms prescribed by the commissioner, a refund equal to the tax paid on the gross receipts of the exempt items must be paid to the applicant. Only the following persons may apply for the refund:

(1) for subdivision 1, clauses (1), (2), and (14), the applicant must be the purchaser;

(2) for subdivision 1, clause (3), the applicant must be the governmental subdivision;

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(3) for subdivision 1, clause (4), the applicant must be the recipient of the benefits provided in United States Code, title 38, chapter 21;

(4) for subdivision 1, clause (5), the applicant must be the owner of the homestead property;

(5) for subdivision 1, clause (6), the owner of the qualified low-income housing project;

(6) for subdivision 1, clause (7), the applicant must be a municipal electric utility or a joint venture of municipal electric utilities;

(7) for subdivision 1, clauses (8), (11), (12), and (15), the owner of the qualifying business; and

(8) for subdivision 1, clauses (9), (10), and (13), the applicant must be the governmental entity that owns or contracts for the project or facility.

Subd. 3. **Application.** (a) The application must include sufficient information to permit the commissioner to verify the tax paid. If the tax was paid by a contractor, subcontractor, or builder, under subdivision 1, clauses (3) to (13), or (15), the contractor, subcontractor, or builder must furnish to the refund applicant a statement including the cost of the exempt items and the taxes paid on the items unless otherwise specifically provided by this subdivision. The provisions of sections 289A.40 and 289A.50 apply to refunds under this section.

(b) An applicant may not file more than two applications per calendar year for refunds for taxes paid on capital equipment exempt under section 297A.68, subdivision 5.

Subd. 4. **Interest.** Interest must be paid on the refund at the rate in section 270C.405 from 90 days after the refund claim is filed with the commissioner for taxes paid under subdivision 1.

Subd. 5. **Appropriation.** The amount required to make the refunds is annually appropriated to the commissioner.

#### 297D.01 DEFINITIONS.

Subdivision 1. **Marijuana.** "Marijuana" means any marijuana, whether real or counterfeit, as defined in section 152.01, subdivision 9, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Minnesota laws.

Subd. 2. **Controlled substance.** "Controlled substance" means any drug or substance, whether real or counterfeit, as defined in section 152.01, subdivision 4, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Minnesota laws. "Controlled substance" does not include marijuana.

Subd. 3. **Tax obligor or obligor.** "Tax obligor" or "obligor" means a person who in violation of Minnesota law manufactures, produces, ships, transports, or imports into Minnesota or in any manner acquires or possesses more than 42-1/2 grams of marijuana, or seven or more grams of any controlled substance, or ten or more dosage units of any controlled substance which is not sold by weight. A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the tax obligor's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of revenue.

#### 297D.02 ADMINISTRATION.

The commissioner of revenue shall administer this chapter. Payments required by this chapter must be made to the commissioner on the form provided by the commissioner. Tax obligors are not required to give their name, address, Social Security number, or other identifying information on the form. The commissioner shall collect all taxes under this chapter.

#### 297D.03 RULES.

The commissioner may adopt rules necessary to enforce this chapter. The commissioner shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marijuana and controlled substances on which a tax is imposed.

#### 297D.04 TAX PAYMENT REQUIRED FOR POSSESSION.

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No tax obligor may possess any marijuana or controlled substance upon which a tax is imposed by section 297D.08 unless the tax has been paid on the marijuana or other controlled substance as evidenced by a stamp or other official indicia.

#### **297D.05 NO IMMUNITY.**

Nothing in this chapter may in any manner provide immunity for a tax obligor from criminal prosecution pursuant to Minnesota law.

#### **297D.06 PHARMACEUTICALS.**

Nothing in this chapter requires persons registered under chapter 151 or otherwise lawfully in possession of marijuana or a controlled substance to pay the tax required under this chapter.

#### **297D.07 MEASUREMENT.**

For the purpose of calculating the tax under section 297D.08, a quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the tax obligor's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

#### **297D.08 TAX RATE.**

A tax is imposed on marijuana and controlled substances as defined in section 297D.01 at the following rates:

- (1) on each gram of marijuana, or each portion of a gram, \$3.50; and
- (2) on each gram of controlled substance, or portion of a gram, \$200; or
- (3) on each ten dosage units of a controlled substance that is not sold by weight, or portion thereof, \$400.

#### **297D.085 CREDIT FOR PREVIOUSLY PAID TAXES.**

If another state or local unit of government has previously assessed an excise tax on the marijuana or controlled substances, the taxpayer must pay the difference between the tax due under section 297D.08 and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax due under section 297D.08, no tax is due. The burden is on the taxpayer to show that an excise tax on the marijuana or controlled substances has been paid to another state or local unit of government.

#### **297D.09 PENALTIES; CRIMINAL PROVISIONS.**

Subdivision 1. **Penalties.** Any tax obligor violating this chapter is subject to a penalty of 100 percent of the tax in addition to the tax imposed by section 297D.08. The penalty will be collected as part of the tax.

Subd. 1a. **Criminal penalty; sale without affixed stamps.** In addition to the tax penalty imposed, a tax obligor distributing or possessing marijuana or controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a crime and, upon conviction, may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.

Subd. 2. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon any criminal offense specified in this section, in the proper court within six years after the commission of this offense.

#### **297D.10 STAMP PRICE.**

Official stamps, labels, or other indicia to be affixed to all marijuana or controlled substances shall be purchased from the commissioner. The purchaser shall pay 100 percent of face value for each stamp, label, or other indicia at the time of the purchase.

#### **297D.11 PAYMENT DUE.**

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Subdivision 1. **Stamps affixed.** When a tax obligor purchases, acquires, transports, or imports into this state marijuana or controlled substances on which a tax is imposed by section 297D.08, and if the indicia evidencing the payment of the tax have not already been affixed, the tax obligor shall have them permanently affixed on the marijuana or controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.

Subd. 2. **Payable on possession.** Taxes imposed upon marijuana or controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by a tax obligor.

#### **297D.12 ALL ASSESSMENTS ARE JEOPARDY.**

Subdivision 1. **Assessment procedure.** An assessment for a tax obligor not possessing valid stamps or other official indicia showing that the tax has been paid shall be considered a jeopardy assessment or collection, as provided in section 270C.36. The commissioner shall assess a tax and applicable penalties based on personal knowledge or information available to the commissioner; mail the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax and penalty by any method prescribed in chapter 270C, except that the commissioner need not await the expiration of the times specified in chapter 270C.

Subd. 2. **Injunction prohibited.** No person may bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by this chapter.

Subd. 3. **Standard of proof.** The tax and penalties assessed by the commissioner are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the commissioner with the court administrator, or any other certificate by the commissioner of the amount of tax and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.

#### **297D.13 CONFIDENTIAL NATURE OF INFORMATION.**

Subdivision 1. **Disclosure prohibited.** Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a tax obligor; nor can any information contained in such a report or return or obtained from a tax obligor be used against the tax obligor in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this chapter from the tax obligor making the return.

Subd. 2. **Penalty for disclosure.** Any person violating this section is guilty of a gross misdemeanor.

Subd. 3. **Statistics.** This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of tax obligors or the contents of particular returns or reports.

Subd. 4. **Possession of stamps.** A stamp denoting payment of the tax imposed under this chapter must not be used against the taxpayer in a criminal proceeding, except that the stamp may be used against the taxpayer in connection with the administration or civil or criminal enforcement of the tax imposed under this chapter or any similar tax imposed by another state or local unit of government.

#### **297F.01 DEFINITIONS.**

Subdivision 1. **Applicability.** Unless the language or context clearly indicates that a different meaning is intended, the following terms for the purposes of this chapter, have the following meanings.

Subd. 2. **Business.** "Business" means any trade, occupation, activity, or enterprise engaged in selling or distributing cigarettes or tobacco products in this state.

Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in part of tobacco that weighs 4.5 pounds or less per thousand:

(1) the wrapper or cover of which is made of paper or another substance or material except tobacco; or

(2) wrapped in any substance containing tobacco, however labeled or named, which, because of its appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to or purchased by consumers as a cigarette, as defined in clause (1), unless it is wrapped in whole tobacco leaf and does not have a cellulose acetate or other cigarette-like filter.

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Subd. 4. **Cigarette distributor.** "Cigarette distributor" means any of the following:

(1) a person engaged in the business of selling cigarettes in this state and who manufactures or who brings, or causes to be brought, into this state from outside the state any packages of cigarettes for sale to subjobbers or retailers;

(2) a person engaged in the business outside this state who ships or transports cigarettes to retailers in this state, to be sold by those retailers;

(3) a person who is on direct purchase from a cigarette manufacturer and applies cigarette stamps on at least 50 percent of cigarettes sold by that person.

Subd. 5. **Cigarette subjobber.** "Cigarette subjobber" means any person who acquires stamped cigarettes or other state's stamped cigarettes for the primary purpose of resale to retailers, and any licensed distributor who delivers, sells, or distributes stamped cigarettes from a place of business other than that licensed in the distributor's license.

"Cigarette subjobber" also means a person who is a vending machine operator. A vending machine operator is a person whose principal business is operating, or owning and leasing to operators, machines for the vending of merchandise or service.

Subd. 6. **Commissioner.** "Commissioner" means the state commissioner of revenue.

Subd. 7. **Consumer.** "Consumer" means an individual who has title to or possession of cigarettes or tobacco products for personal consumption rather than for sale.

Subd. 8. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code as defined in section 289A.02, subdivision 7.

Subd. 9. **Licensing period.** "Licensing period" means a two-year period during which licenses are issued. A licensing period begins on January 1 of each even-numbered year and ends on December 31 of the following odd-numbered year.

Subd. 9a. **Invoice.** "Invoice" means a detailed list of cigarettes and tobacco products purchased or sold in this state that contains the following information:

(1) name of seller;

(2) name of purchaser;

(3) date of sale;

(4) invoice number;

(5) itemized list of goods sold including brands of cigarettes and number of cartons of each brand, unit price, and identification of tobacco products by name, quantity, and unit price; and

(6) any rebates, discounts, or other reductions.

Subd. 10. **Manufacturer.** "Manufacturer" means a person who produces and sells cigarettes or tobacco products.

Subd. 10a. **Out-of-state retailer.** "Out-of-state retailer" means a person engaged outside of this state in the business of selling, or offering to sell, cigarettes or tobacco products to consumers located in this state.

Subd. 10b. **Moist snuff.** "Moist snuff" means any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth.

Subd. 11. **Package.** "Package" means the individual packet, box, or other container used to contain and convey cigarettes to the consumer.

Subd. 12. **Person.** "Person" means an individual or any entity engaged in the sale of cigarettes or tobacco products.

Subd. 13. **Place of business.** "Place of business" means a place where cigarettes or tobacco products are sold or where cigarettes or tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

Subd. 13a. **Premium cigar.** "Premium cigar" means any cigar that is hand-constructed and hand-rolled, has a wrapper that is made entirely from whole tobacco leaf, has a filler and binder that is made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor, and has a wholesale price of no less than \$2.

Subd. 14. **Retailer.** "Retailer" means a person required to be licensed under chapter 461 engaged in this state in the business of selling, or offering to sell, cigarettes or tobacco products to consumers.

Subd. 15. **Retail outlet.** "Retail outlet" means each place of business from which cigarettes or tobacco products are sold to consumers.

Subd. 16. **Sale.** "Sale" means a transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. It also includes gifts or samples provided for advertising or promotional purposes, made by a person engaged in the selling of cigarettes or tobacco products.

Subd. 17. **Stamp.** "Stamp" means the adhesive stamp supplied by the commissioner of revenue for use on cigarette packages or any other indicia adopted by the commissioner to indicate that the tax has been paid.

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Subd. 18. **Storage.** "Storage" means any keeping or retention of cigarettes or tobacco products for use or consumption in this state.

Subd. 19. **Tobacco products.** (a) "Tobacco products" means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco; but does not include cigarettes as defined in this section. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

(b) Except for the imposition of tax under section 297F.05, subdivisions 3 and 4, tobacco products includes a premium cigar, as defined in subdivision 13a.

Subd. 20. **Tobacco products distributor.** "Tobacco products distributor" means any of the following:

(1) a person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;

(2) a person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

(3) a person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

Subd. 21. **Tobacco products subjobber.** "Tobacco products subjobber" means a person, other than a manufacturer or distributor, who buys from a distributor tobacco products upon which the tax imposed by this chapter has been paid and sells them to persons other than the ultimate consumers, and any licensed distributor who delivers, sells, or distributes tobacco products upon which the tax imposed by this chapter has been paid from a place of business other than that licensed in the distributor's license.

Subd. 21a. **Unlicensed seller.** "Unlicensed seller" means anyone who is not licensed under section 297F.03 to sell the particular product to the purchaser or possessor of the product.

Subd. 22. **Use.** "Use" means the exercise of a right or power incidental to the ownership of cigarettes or tobacco products.

Subd. 22a. **Weighted average retail price.** "Weighted average retail price" means (1) the average retail price per pack of 20 cigarettes, with the average price weighted by the number of packs sold at each price, (2) reduced by the sales tax included in the retail price, and (3) adjusted for the expected inflation as provided in section 297F.25, subdivision 1.

Subd. 23. **Wholesale sales price.** "Wholesale sales price" means the price at which a distributor purchases a tobacco product. Wholesale sales price includes the applicable federal excise tax, freight charges, or packaging costs, regardless of whether they were included in the purchase price.

### **297F.02 ADMINISTRATION.**

Subdivision 1. **Duties of commissioner.** The commissioner shall enforce the provisions of this chapter and may prescribe rules consistent with the provisions of this chapter for its detailed and efficient administration.

In the enforcement of this chapter, the commissioner may call any county attorney or any peace officer for assistance and may appoint such additional employees as may be required to administer this chapter. The commissioner may bring injunction proceedings to restrain any person from acting as a distributor without complying with the provisions of this chapter.

Subd. 2. **Powers of commissioner.** The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings under this chapter and, in connection with such investigations, inquiries, and hearings, the commissioner and the duly authorized agents shall have all the powers conferred upon the commissioner and the commissioner's examiners by chapter 270C, and the provisions of that chapter shall apply to all such investigations, inquiries, and hearings.

Subd. 3. **Expenses of administration.** Expenses for the administration of this chapter shall be paid out of appropriations to the commissioner for the administration of this chapter and shall include fees and expenses incurred by the attorney general and any county attorney in

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litigation in connection with the enforcement of this chapter. Expenses also include all court costs and expenses.

**297F.03 LICENSES; CIGARETTE AND TOBACCO PRODUCTS DISTRIBUTOR AND SUBJOBBER.**

Subdivision 1. **Selling without license illegal.** No person shall engage in the business of a distributor or subjobber at any place of business without first having received a license from the commissioner to engage in that business at that place of business.

Subd. 2. **Form of application.** Every application for a cigarette or tobacco products license shall be made on a form prescribed by the commissioner.

Subd. 3. **Place of application.** A separate application for a distributor's license shall be made for each place of business at which a distributor proposes to engage in business.

A separate application for a subjobber's license may be made by a licensed distributor for each place of business, other than that licensed in the distributor's license, to which the distributor sells or distributes stamped cigarettes or tobacco products.

Subd. 4. **Nonresident application.** A person outside this state who ships or transports cigarettes or tobacco products to retailers in this state, to be sold by those retailers, shall make an application for a distributor's license, be granted such a license by the commissioner, and thereafter be subject to all the provisions of this chapter.

Subd. 5. **License fees; cigarettes.** Each application for a cigarette distributor's license must be accompanied by a fee of \$300. Each application for a cigarette subjobber's license must be accompanied by a fee of \$24. A distributor or subjobber applying for a license during the second year of a two-year licensing period is required to pay only one-half of the license fee.

Subd. 6. **License fees; tobacco products.** Each application for a tobacco products distributor's license must be accompanied by a fee of \$75. Each application for a tobacco products subjobber's license must be accompanied by a fee of \$20. A distributor or subjobber applying for a license during the second year of a two-year licensing period is required to pay only one-half of the license fee.

Subd. 7. **Issuance of license.** The commissioner, upon receipt of the application in proper form, and payment of the license fee required by this chapter, shall, unless otherwise provided by this chapter, issue the applicant a license in the form prescribed by the commissioner. The license permits the applicant to engage in business as a distributor or subjobber at the place of business shown in the application.

Subd. 8. **Licensing period; expiration.** The licensing period begins January 1 of an even-numbered year and ends on December 31 of the following year. Each license issued shall expire on December 31 of the second year of the licensing period unless sooner revoked by the commissioner or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the commissioner.

Subd. 9. **Display.** Each license must be prominently displayed on the premises covered by the license.

Subd. 10. **Transfer.** Licenses are not transferable to any other person.

**297F.031 REGISTRATION REQUIREMENT.**

Prior to making delivery sales or shipping cigarettes or tobacco products in connection with any sales, an out-of-state retailer shall file with the Department of Revenue a statement setting forth the out-of-state retailer's name, trade name, and the address of the out-of-state retailer's principal place of business and any other place of business.

**297F.04 LICENSE SUSPENSION, CANCELLATION, NONRENEWAL, OR REVOCATION.**

Subdivision 1. **Powers of commissioner.** The commissioner may revoke or suspend the license or licenses of any distributor or subjobber for violation of this chapter, any other act applicable to the sale of cigarettes or tobacco products, or any rule promulgated by the commissioner, in furtherance of this chapter.

Subd. 2. **Refusal to issue or renew; revocation.** The commissioner must not issue or renew a license under this chapter, and may revoke a license under this chapter, if the applicant or licensee:

- (1) owes \$500 or more in delinquent taxes as defined in section 270C.72, subdivision 2;
- (2) after demand, has not filed tax returns required by the commissioner;



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(3) had a cigarette or tobacco license revoked by the commissioner within the past two years;

(4) had a sales and use tax permit revoked by the commissioner within the past two years; or

(5) has been convicted of a crime involving cigarettes, including but not limited to: selling stolen cigarettes or tobacco products, receiving stolen cigarettes or tobacco products, or involvement in the smuggling of cigarettes or tobacco products.

Subd. 2a. **Cancellation or nonrenewal.** The commissioner may cancel a license or not renew a license if one of the following conditions occurs:

(1) the license holder has not filed a cigarette or tobacco products tax return for at least one year;

(2) the license holder has not reported any cigarette or tobacco products tax liability on the license holder's returns for at least one year; or

(3) the license holder requests cancellation of the license.

Subd. 3. **Notice.** No license may be revoked or suspended under this chapter, and no application for a license may be denied under this chapter, except after 20 days' notice. In that notice the commissioner shall specify the allegations against the licensee or applicant, and provide the licensee or applicant the right to request in writing within 20 days a contested case hearing as provided in chapter 14.

If a written request for a hearing is received by the Department of Revenue within 20 days of the date of the initial notice, the hearing must be held within 45 days after referral to the Office of Administrative Hearings, and no earlier than 20 days after notice to the licensee or applicant of the hearing time and place. A license is revoked or suspended, and an application is denied, when the commissioner serves notice of revocation, suspension, or denial after 20 days have passed following the initial notice under this paragraph without a request for hearing being made, or if a hearing is held, after the commissioner serves an order of revocation, suspension, or denial under section 14.62, subdivision 1. All notices under this paragraph may be served personally or by mail.

**297F.05 RATES OF TAX; PERSONAL DEBT.**

Subdivision 1. **Rates; cigarettes.** A tax is imposed upon the sale of cigarettes in this state, upon having cigarettes in possession in this state with intent to sell, upon any person engaged in business as a distributor, and upon the use or storage by consumers, at the rate of 141.5 mills, or 14.15 cents, on each cigarette.

Subd. 1a. **Annual indexing.** (a) Each year the commissioner shall adjust the tax rates under subdivision 1, including any adjustment made in prior years under this subdivision, by multiplying the mill rates for the current calendar year by an adjustment factor and rounding the result to the nearest mill. The adjustment factor equals the in-lieu sales tax rate that applies to the following calendar year divided by the in-lieu sales tax rate for the current calendar year. For purposes of this subdivision, "in-lieu sales tax rate" means the tax rate established under section 297F.25, subdivision 1. For purposes of the calculations under this subdivision to be made in any year in which an increase in the federal or state excise tax on cigarettes is implemented, the commissioner shall exclude from the calculated average price for the current year an amount equal to any increase in the state or federal excise tax rate.

(b) The commissioner shall publish the resulting rate by November 1 and the rate applies to sales made on or after January 1 of the following year.

(c) The determination of the commissioner under this subdivision is not a rule and is not subject to the Administrative Procedure Act in chapter 14.

Subd. 2. **Distribution of free sample packages.** A person who distributes free packages of cigarettes is liable for the payment of tax under this chapter.

Subd. 3. **Rates; tobacco products.** (a) Except as provided in subdivision 3a, a tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor, at the rate of 95 percent of the wholesale sales price of the tobacco products. The tax is imposed at the time the distributor:

(1) brings, or causes to be brought, into this state from outside the state tobacco products for sale;

(2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(3) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

(b) Notwithstanding paragraph (a), a minimum tax equal to the rate imposed on a pack of 20 cigarettes weighing not more than three pounds per thousand, as established under subdivision 1, is imposed on each container of moist snuff.

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For purposes of this subdivision, a "container" means the smallest consumer-size can, package, or other container that is marketed or packaged by the manufacturer, distributor, or retailer for separate sale to a retail purchaser. When more than one container is packaged together, each container is subject to tax.

Subd. 3a. **Rates; tobacco.** (a) A tax is imposed upon all premium cigars in this state and upon any person engaged in business as a tobacco product distributor, at the lesser of:

- (1) the rate of 95 percent of the wholesale sales price of the premium cigars; or
- (2) \$3.50 per premium cigar.

(b) The tax imposed under paragraph (a) is imposed at the time the tobacco products distributor:

(1) brings, or causes to be brought, into this state from outside the state premium cigars for sale;

(2) makes, manufactures, or fabricates premium cigars in this state for sale in this state; or

(3) ships or transports premium cigars to retailers in this state, to be sold by those retailers.

Subd. 4. **Use tax; tobacco products.** Except as provided in subdivision 4a, a tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon such consumers, at the rate of 95 percent of the cost to the consumer of the tobacco products or the minimum tax under subdivision 3, paragraph (b), whichever is greater.

Subd. 4a. **Use tax; premium cigars.** A tax is imposed upon the use or storage by consumers of all premium cigars in this state, and upon such consumers, at the lesser of:

(1) the rate of 95 percent of the cost to the consumer of the premium cigars; or

(2) \$3.50 per premium cigar.

Subd. 5. **Tax as personal debt.** The tax imposed by this chapter, and interest and penalties imposed with respect to it, is a personal debt of the person required to file a return from the time the liability for it arises, regardless of when the time for payment of the liability occurs. In the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, the debt is that of the person in the person's official or fiduciary capacity only, unless the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties. In that case, the person is personally liable for the deficiency.

Subd. 6. **Tax construction.** The tax imposed by this section is not a cost of doing business or an overhead expense under section 325D.01, subdivision 7.

Subd. 7. **Tax; sales by state.** The state of Minnesota or any of its agencies, instrumentalities, or governmental subdivisions is subject to the tax imposed by this chapter on all cigarettes or tobacco products sold, in the same manner as distributors, if such unit is engaged in the purchase and sale of cigarettes or tobacco products.

### **297F.06 EXEMPTIONS FROM TAX.**

Subdivision 1. **Federal laws.** The tax imposed by this section does not apply with respect to any sale of cigarettes or tobacco products which under the Constitution and laws of the United States may not be subject to taxation by the state.

Subd. 2. **Use tax.** The use tax does not apply if the tax imposed on cigarettes or tobacco products has been paid.

Subd. 3. **Cigarette use tax.** The cigarette use tax does not apply to the use or storage of cigarettes in quantities of 200 or fewer in the possession of any one consumer, provided that the cigarettes were carried into this state by that consumer.

Subd. 4. **Tobacco products use tax.** The tobacco products use tax does not apply to the possession, use, or storage of tobacco products if (1) the tobacco products have an aggregate cost in any calendar month to the consumer of \$50 or less, and (2) the tobacco products were carried into this state by that consumer.

Subd. 5. **Ocean-going vessels.** The commissioner may adopt rules for the sale by licensed distributors of tax-free cigarettes to the masters of ocean-going vessels for use aboard ship outside the continental limits of the United States, provided the cigarettes are also exempt from the taxes imposed on cigarettes by the United States government.

### **297F.07 SALES TO INDIAN TRIBES.**

Subdivision 1. **Wholesalers.** A wholesaler may set aside the part of the wholesaler's cigarette and tobacco product stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of Interior without paying the tax required by this chapter. The amount of unstamped or untaxed stock that wholesalers may deliver to an Indian reservation is limited to amounts necessary to meet the personal consumption needs

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of qualified purchasers. The unstamped stock must be kept separate and apart from stamped stock. When shipping or delivering unstamped or untaxed stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler shall send the duplicate to the commissioner not later than the 18th day of the following calendar month. If the wholesaler fails to comply with this section, the commissioner shall revoke the permission granted to the wholesaler to keep a stock of unstamped goods.

Subd. 2. **Retailers.** Retailers who are Indian tribal organizations may keep unstamped or untaxed stock intended for sale to qualified purchasers.

Subd. 3. **Qualified purchasers.** A qualified purchaser of unstamped or untaxed stock means only an enrolled member of the Indian tribe which is offering the stock for sale.

Subd. 4. **Sales to nonqualified buyers.** A retailer who sells or otherwise disposes of unstamped or untaxed stock other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by section 297F.05, and remit the tax to the Department of Revenue at the same time and manner as required by section 297F.09. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax and the commissioner may seize any product destined to be delivered to the retailer. The product so seized shall be considered contraband and be subject to the procedures outlined in section 297F.21, subdivision 3.

This section does not relieve the buyer or possessor of unstamped or untaxed stock from personal liability for the tax.

### **297F.08 CIGARETTE STAMPS.**

Subdivision 1. **Stamp put on by distributor.** Except as otherwise provided in this chapter, payment of the tax imposed by this chapter must be evidenced by stamps affixed to each package. Before delivering, or causing to be delivered, a package to any person in this state, a distributor shall firmly affix to each package of cigarettes appropriate stamps in amounts equal to the tax on those cigarettes as provided in this chapter.

Subd. 2. **Tax due; cigarettes.** Notwithstanding any other provisions of this chapter, the tax due on the return is based upon actual stamps purchased during the reporting period.

Subd. 3. **Time of affixing stamp.** In all cases where cigarettes are shipped into this state by any licensed distributor from outside this state, the appropriate stamps must be affixed to packages at the time the package enters the state.

Subd. 4. **Stamps; design, printing.** The commissioner shall adopt the design of two stamps. One stamp must be designed for application to cigarette packages destined for retail sale on an Indian reservation which is a party to an agreement under section 270C.19, subdivision 2, and only to those packages. A second stamp must be designed for all other cigarette packages subject to the provisions of this chapter. The commissioner shall arrange for the printing of stamps in such amounts and denominations as the commissioner deems necessary.

Subd. 5. **Deposit of proceeds.** The commissioner shall use the amounts appropriated by law to purchase stamps for resale. The commissioner shall charge the purchasers for the costs of the stamps along with the tax value plus shipping costs. The costs recovered along with shipping costs must be deposited into the general fund.

Subd. 6. **Section 16A.56 superseded.** The provisions of this chapter prescribing the powers and duties of the commissioner with relation to stamps supersede all the provisions of section 16A.56 in conflict.

Subd. 7. **Price of stamps.** The commissioner shall sell stamps to any person licensed as a distributor. The commissioner shall not sell stamps to any other person. The commissioner may prescribe the method of shipment of the stamps to the distributor as well as the quantities of stamps purchased.

Subd. 8. **Sale of stamps.** The commissioner may sell stamps on a credit basis under conditions prescribed by the commissioner. The commissioner shall sell the stamps at a price which includes the tax after giving effect to the discount provided in subdivision 7. The commissioner shall recover the actual costs of the stamps from the distributor. The commissioner shall annually establish the maximum amount of stamps that may be purchased each month.

Subd. 8a. **Revolving account.** A cigarette tax stamp revolving account is created. The commissioner shall use the amounts in this fund to purchase stamps for resale. The commissioner shall charge distributors for the tax value of the stamps they receive along with the commissioner's cost to purchase the stamps and ship them to the distributor. The stamp purchase and shipping costs recovered must be credited to the revolving account and are appropriated to

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the commissioner for the further purchases and shipping costs. The revolving account is initially funded by a \$40,000 transfer from the Department of Revenue.

Subd. 9. **Tax stamping machines.** The commissioner shall require any person licensed as a distributor to stamp packages with a tax stamping machine, approved by the commissioner, which shall be provided by the distributor. The commissioner shall also supervise and check the operation of the machines and shall provide for the payment of the tax on any package so stamped, subject to the discount provided in subdivision 7. If the commissioner finds that a stamping machine is not affixing a legible stamp on the package, the commissioner may order the distributor to immediately cease the stamping process until the machine is functioning properly.

Subd. 10. **Resale or transfer of stamps prohibited.** No distributor shall resell or transfer any stamps purchased by the distributor from the commissioner. A distributor may transfer another state's stamped cigarettes to another distributor for the purpose of resale in the other state. A distributor who has on hand any uncanceled stamps at the time of discontinuing the business of selling cigarettes may return them to the commissioner and receive a refund of the amount paid for the stamps. Stamps which have become mutilated or unfit for use, or are affixed to cigarettes being returned to the manufacturer, or are affixed to packages which, or the contents of which, have become damaged and unfit for sale, shall be replaced by the commissioner, upon application by the distributor owning the stamps or cigarettes if an investigation discloses that the stamps have not evidenced a taxable transaction, after compliance with rules or orders of the commissioner designed to prevent use of the stamps replaced.

Subd. 12. **Cigarettes in interstate commerce.** (a) A person may not transport or cause to be transported from this state cigarettes for sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold.

(b) A person may not affix to cigarettes the stamp required by another state or pay any other excise tax on the cigarettes imposed by another state if the other state prohibits stamps from being affixed to the cigarettes, prohibits the payment of any other excise tax on the cigarettes, or prohibits the sale of the cigarettes.

(c) Not later than 15 days after the end of each calendar quarter, a person who transports or causes to be transported from this state cigarettes for sale in another state shall submit to the commissioner a report identifying the quantity and style of each brand of the cigarettes transported or caused to be transported in the preceding calendar quarter, and the name and address of each recipient of the cigarettes. This reporting requirement only applies to cigarettes manufactured by companies that are not original or subsequent participating manufacturers in the Master Settlement Agreement with other states.

(d) For purposes of this section, "person" has the meaning given in section 297F.01, subdivision 12. Person does not include any common or contract carrier, or public warehouse that is not owned, in whole or in part, directly or indirectly by such person, and does not include a manufacturer that is an original or subsequent participating manufacturer in the Master Settlement Agreement with other states.

Subd. 13. **Bond.** The commissioner may require the furnishing of a corporate surety bond or a certified check in an amount suitable to guarantee payment of the tax stamps purchased by a distributor. The bond or certified check may be required when the commissioner determines that a distributor is (1) delinquent in the filing of any return required under this chapter, or (2) delinquent in the payment of any uncontested tax liability under this chapter. The distributor shall furnish the bond or certified check for a period of two years, after which, if the distributor has not been delinquent in the filing of any returns required under this chapter, or delinquent in the paying of any tax under this chapter, a bond or certified check is no longer required. The commissioner at any time may apply the bond or certified check to any unpaid taxes or fees, including interest and penalties, owed to the department by the distributor.

### 297F.09 RETURNS; PAYMENT OF TAX.

Subdivision 1. **Monthly return; cigarette distributor.** On or before the 18th day of each calendar month, a distributor with a place of business in this state shall file a return with the commissioner showing the quantity of cigarettes manufactured or brought in from outside the state or purchased during the preceding calendar month and the quantity of cigarettes sold or otherwise disposed of in this state and outside this state during that month. A licensed distributor outside this state shall in like manner file a return showing the quantity of cigarettes shipped or transported into this state during the preceding calendar month. Returns must be made in the form and manner prescribed by the commissioner and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full unpaid tax liability

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shown by it. For distributors subject to the accelerated tax payment requirements in subdivision 10, the return for the May liability is due two business days before June 30th of the year and the return for the June liability is due on or before August 18th of the year.

Subd. 2. **Monthly return; tobacco products distributor.** On or before the 18th day of each calendar month, a distributor with a place of business in this state shall file a return with the commissioner showing the quantity and wholesale sales price of each tobacco product:

(1) brought, or caused to be brought, into this state for sale; and

(2) made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month.

Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns must be made in the form and manner prescribed by the commissioner and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full tax liability shown. For distributors subject to the accelerated tax payment requirements in subdivision 10, the return for the May liability is due two business days before June 30th of the year and the return for the June liability is due on or before August 18th of the year.

Subd. 3. **Use tax return; cigarette or tobacco products consumer.** On or before the 18th day of each calendar month, a consumer who, during the preceding calendar month, has acquired title to or possession of cigarettes or tobacco products for use or storage in this state, upon which cigarettes or tobacco products the tax imposed by this chapter has not been paid, shall file a return with the commissioner showing the quantity of cigarettes or tobacco products so acquired. The return must be made in the form and manner prescribed by the commissioner, and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.

Subd. 4. **Tax provisions applicable to consumers.** All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collection of taxes, apply to consumers.

Subd. 4a. **Reporting requirements.** No later than the 18th day of each calendar month, an out-of-state retailer that has made a delivery of cigarettes or tobacco products or shipped or delivered cigarettes or tobacco products into the state in a delivery sale in the previous calendar month shall file with the Department of Revenue reports in the form and in the manner prescribed by the commissioner of revenue that provides for each delivery sale, the name and address of the purchaser and the brand or brands and quantity of cigarettes or tobacco products sold. A tobacco retailer that meets the requirements of United States Code, title 15, section 375 et seq. satisfies the requirements of this subdivision.

Subd. 5. **Extension of time.** The commissioner may extend the time for filing returns and remittance of tax, deficiencies, and penalties for not more than 60 days. The commissioner may require that a tentative return be filed at the time for filing the regularly required return and that payment of the tax be made with it on the basis of the tentative return. When an extension of time for payment has been granted under this section, interest is payable at the rate provided in section 270C.40 from the date when the payment should have been made, if no extension had been granted, until the tax is paid.

Subd. 7. **Electronic payment.** A cigarette or tobacco products distributor having a liability of \$10,000 or more during a fiscal year ending June 30 must remit all liabilities in all subsequent calendar years by electronic means.

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

Subd. 9. **Interest.** The amount of tax not timely paid bears interest at the rate specified in section 270C.40 from the time such tax should have been paid until paid. The penalty imposed in this section bears interest at the rate specified in section 270C.40 from the date provided in section 270C.40, subdivision 3, to the date of payment of the penalty. Any interest and penalty is added to the tax and collected as a part of it.

Subd. 10. **Accelerated tax payment; cigarette or tobacco products distributor.** A cigarette or tobacco products distributor having a liability of \$250,000 or more during a fiscal year ending June 30, shall remit the June liability for the next year in the following manner:

(a) Two business days before June 30 of the year, the distributor shall remit the actual May liability and 81.4 percent of the estimated June liability to the commissioner and file the return in the form and manner prescribed by the commissioner.

(b) On or before August 18 of the year, the distributor shall submit a return showing the actual June liability and pay any additional amount of tax not remitted in June. A penalty

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is imposed equal to ten percent of the amount of June liability required to be paid in June, less the amount remitted in June. However, the penalty is not imposed if the amount remitted in June equals the lesser of:

- (1) 81.4 percent of the actual June liability; or
- (2) 81.4 percent of the preceding May liability.

#### **297F.10 DEPOSIT OF PROCEEDS.**

Subdivision 1. **Tax and use tax on cigarettes.** Revenue received from cigarette taxes, as well as related penalties, interest, license fees, and miscellaneous sources of revenue shall be deposited by the commissioner in the state treasury and credited as follows:

(1) \$22,220,000 for fiscal year 2006 and \$22,250,000 for fiscal year 2007 and each year thereafter must be credited to the Academic Health Center special revenue fund hereby created and is annually appropriated to the Board of Regents at the University of Minnesota for Academic Health Center funding at the University of Minnesota; and

(2) \$8,550,000 for fiscal years 2007 through fiscal year 2011 and \$3,937,000 each year thereafter must be credited to the medical education and research costs account hereby created in the special revenue fund and is annually appropriated to the commissioner of health for distribution under section 62J.692, subdivision 4; and

(3) the balance of the revenues derived from taxes, penalties, and interest (under this chapter) and from license fees and miscellaneous sources of revenue shall be credited to the general fund.

Subd. 2. **Tax and use tax on tobacco products.** Revenue received from taxes on tobacco products, as well as related penalties, interest, and license fees shall be deposited by the commissioner in the state treasury and credited to the general fund.

#### **297F.11 INFORMATIONAL REPORTS; CIGARETTES.**

Subdivision 1. **General rule.** The following persons shall file with the commissioner a monthly informational report in the form and manner prescribed by the commissioner:

- (1) a distributor licensed to ship cigarettes into Minnesota;
- (2) a person who manufactures cigarettes within the state;
- (3) any other person who imports cigarettes into Minnesota; and
- (4) a person who possesses, receives, stores, or warehouses cigarettes in Minnesota, upon which the tax imposed by this chapter has not been paid.

The requirement of filing an informational report does not apply to a person conveying or possessing cigarettes described in this chapter, nor to any lawful manufacture of cigarettes within the state for personal consumption.

Subd. 2. **Filing dates; failure to file.** No payment of any tax is required to be remitted with the report required under subdivision 1. The report must be filed on or before the tenth day following the end of each calendar month, regardless of whether or not the person shipped, manufactured, possessed, received, stored, or warehoused any cigarettes into or within Minnesota during the previous month, unless the commissioner determines that a longer filing period is appropriate for a particular person.

Subd. 3. **Common carriers.** Common carriers and contract carriers transporting cigarettes into this state shall file with the commissioner reports of all such shipments other than those which are delivered to public warehouses of first destination in this state, licensed under the provisions of chapter 231. The reports must be filed monthly on or before the tenth day of each month and must show with respect to deliveries made in the preceding month: the date, point of origin, point of delivery, name of consignee, the quantity of cigarettes delivered, and any other information the commissioner requires.

A common carrier or a contract carrier transporting cigarettes into Minnesota shall permit examination by the commissioner of its records relating to the shipment of cigarettes.

Subd. 4. **Cigarette consumers.** A person who files a cigarette consumer return as required by this chapter may fulfill the requirements of this section by indicating on the cigarette consumer's return which of the items reported on the return were transported into the state by the consumer. The requirement of filing an informational report does not apply to consumers who import fewer than 200 cigarettes into this state.

#### **297F.12 INFORMATIONAL REPORTS; TOBACCO PRODUCTS.**

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Subdivision 1. **General rule.** The transportation of tobacco products into this state by means other than common carrier must be reported to the commissioner within 30 days with the following exceptions:

(1) transportation of not more than 50 cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned;

(2) transportation by a person with a place of business outside the state, who is licensed as a distributor under this chapter, of tobacco products sold by the person to a retailer in this state.

The report must be made in the form and manner prescribed by the commissioner.

Subd. 2. **Common carriers.** Common carriers transporting tobacco products into this state shall file with the commissioner reports of all such shipments other than those which are delivered to public warehouses of first destination in this state, licensed under the provisions of chapter 231. The reports must be filed monthly on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month: the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and any other information required by the commissioner.

A common carrier transporting tobacco products into Minnesota shall permit examination by the commissioner of its records relating to the shipment of tobacco products.

Subd. 3. **Manufacturers.** A manufacturer of tobacco products as defined by this chapter shall report in the form and manner prescribed by the commissioner all sales of tobacco products to Minnesota licensed distributors, subjobbers, retailers, or to any locations within the state. The report is due on the 18th day of the month following the reporting period.

### **297F.13 REQUIRED RECORDS.**

Subdivision 1. **Cigarette distributor.** (a) A distributor shall keep at each licensed place of business complete and accurate records for that place of business. The records must include: itemized invoices of cigarettes held, purchased, manufactured, or brought in or caused to be brought in from outside the state, and all sales of cigarettes made, except sales to the ultimate consumer. These records must show the names and addresses of purchasers, the inventory of all stamps affixed and unaffixed and all cigarettes on hand at the close of each period for which a return is required, and any other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes.

(b) A distributor or subjobber who sells cigarettes at retail must maintain a separate inventory, substantiated with invoices for cigarettes that were acquired for retail sale.

(c) When a licensed distributor sells cigarettes exclusively to the ultimate consumer at the address given in the license, no invoice of those sales is required, but itemized invoices must be made of all cigarettes transferred to other retail outlets owned or controlled by that licensed distributor.

(d) All books, records, and other documents required by this chapter shall be preserved for a period of at least 3-1/2 years after the date of the documents or the date of the entries appearing in the records, unless the commissioner in writing authorizes their destruction or disposal at an earlier date.

(e) To determine whether the distributor is in compliance with the provisions of this chapter, at any time during usual business hours the commissioner, or duly authorized agents or employees, may enter a place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the packages of cigarettes and the vending devices in that place of business. If the commissioner, or an agent or employee of the commissioner, is denied free access or is hindered or interfered with in making the examination, the commissioner may revoke the distributor's license.

Subd. 2. **Tobacco products distributor.** (a) A distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the state, or shipped or transported to retailers in this state, and all sales of tobacco products made, except sales to the ultimate consumer.

(b) When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales is required, but itemized invoices must be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor.

(c) All books, records, and other documents required by this chapter must be preserved for a period of at least 3-1/2 years after the date of the documents or the date of the entries appearing

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in the records, unless the commissioner authorizes in writing their destruction or disposal at an earlier date.

(d) To determine whether the distributor is in compliance with the provisions of this chapter, at any time during usual business hours the commissioner, or duly authorized agents or employees, may enter a place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products in that place of business. If the commissioner, or an agent or employee of the commissioner, is denied free access or is hindered or interfered with in making the examination, the commissioner may revoke the distributor's license.

Subd. 3. **Distributor to preserve copies of invoices.** A person who sells cigarettes or tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts, and shall preserve legible copies of all such invoices for 3-1/2 years from the date of the sale.

Subd. 4. **Retailer and subjobber to preserve purchase invoices.** Every retailer and subjobber shall procure itemized invoices of all cigarettes or tobacco products purchased.

The retailer and subjobber shall preserve a legible copy of each invoice for one year from the date of the invoice. The retailer and subjobber shall preserve copies of the invoices at each retail location or at a central location provided that the invoice must be produced and made available at a retail location within one hour when requested by the commissioner or duly authorized agents and employees. Copies should be numbered and kept in chronological order.

To determine whether the business is in compliance with the provisions of this chapter, at any time during usual business hours, the commissioner, or duly authorized agents and employees, may enter any place of business of a retailer or subjobber without a search warrant and inspect the premises, the records required to be kept under this chapter, and the packages of cigarettes, tobacco products, and vending devices contained on the premises.

Subd. 5. **Cigarettes and tobacco products; records of delivery and shipment.** Records of all deliveries or shipments of cigarettes or tobacco products from any public warehouse of first destination in this state (which is subject to the provisions of and licensed under chapter 231), must be kept by the warehouse and made available to the commissioner for inspection. The records must show the name and address of the consignee, the date, the quantity of cigarettes or tobacco products delivered, and any other information required by the commissioner. These records must be preserved for one year from the date of delivery of the cigarettes or tobacco products.

### **297F.14 REFUNDS.**

Subdivision 1. **General right to refund.** If cigarettes or tobacco products, upon which the tax imposed by this chapter has been reported and paid, are shipped or transported by the distributor to consumers to be consumed outside the state, or to retailers or subjobbers outside the state to be sold by those retailers or subjobbers outside the state, or are returned to the manufacturer by the distributor, or destroyed by the distributor, refund of the tax or credit may be made to the distributor.

Subd. 2. **Overpayment of tax.** An overpayment of the tax imposed under this chapter may be refunded to the taxpayer.

Subd. 3. **Credit against tax.** The commissioner may credit the amount determined under this section against taxes otherwise payable under this chapter by the taxpayer.

Subd. 4. **Bad debt.** For any reporting period, a taxpayer may offset against taxes payable under this chapter the amount of taxes previously paid under this chapter that is attributable to a bad debt. The taxes must have been included in a transaction the consideration for which was a debt owed to the taxpayer and which became uncollectible, but only in proportion to the portion of debt that became uncollectible. To qualify for offset under this subdivision, the debt must have qualified as a bad debt under section 166(a) of the Internal Revenue Code. The taxpayer may claim the offset within the time period prescribed in section 297F.17, subdivision 6. If the taxpayer is no longer liable for taxes imposed under this chapter, the commissioner shall refund to the taxpayer the amount of the taxes attributable to the bad debt. Any recovery of the tax claimed as a refund or credit must be reported to the commissioner on the tax return for the month in which the recovery is made. If the taxpayer is no longer required to file returns under this chapter, the taxpayer must reimburse the commissioner for tax recovered in the month following the recovery.

Subd. 5. **Source of refund; cigarettes.** The commissioner of management and budget shall pay the cigarette tax refund out of the general fund. The refunds are apportioned to the same accounts and funds in the general fund to which the tax payments were deposited, except no refunds may be apportioned to the general obligation special tax bond debt service account.



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Subd. 6. **Source of refund; tobacco products.** The commissioner of management and budget shall pay the tobacco products tax refund out of the general fund.

Subd. 7. **Annual appropriation.** There is appropriated annually from the general fund to the commissioner of management and budget the amount necessary to make the refunds provided by this section.

### **297F.15 PHYSICAL INVENTORY; OFFSET.**

Subd. 9. **Physical inventory.** The commissioner or the commissioner's authorized agents may, as considered necessary, require a cigarette or tobacco products distributor to furnish a physical inventory of all cigarettes or tobacco products in stock. The inventory must contain the information that the commissioner requests and must be certified by an officer of the corporation.

Subd. 10. **Offset.** Upon audit, if a distributor's return reflects an overage resulting from an inventory counting error, the overage shall be offset against a shortage, if any, in the month immediately preceding the month of the overage. If any overage remains after that offset, the remainder may only be offset against a shortage, if any, in the month immediately following the month of the overage. If the commissioner determines that the overage is attributable to a mistake by the distributor other than an inventory counting error, the commissioner may permit the overage to be offset against a shortage in any month or months during the 12-month period immediately following the month when the overage was discovered upon audit.

### **297F.17 LIMITATIONS ON TIME FOR ASSESSMENT OF TAX.**

Subdivision 1. **General rule.** Except as otherwise provided in this chapter, the amount of any tax due must be assessed within 3-1/2 years after a return is filed. The taxes are considered assessed within the meaning of this section when the commissioner has prepared a notice of tax assessment and mailed it to the person required to file a return to the post office address given in the return. The notice of tax assessment must be sent by mail to the post office address given in the return and the record of the mailing is presumptive evidence of the giving of such notice, and such records must be preserved by the commissioner.

Subd. 2. **Date of filing.** For purposes of this chapter, a return filed before the last day prescribed by law for its filing is considered filed on the last day.

Subd. 3. **False or fraudulent return or claim for refund; no return.** When a person required to file a return under this chapter files a false or fraudulent return or claim for refund, or fails to file a return, the tax may be assessed, and a proceeding in court for the collection of such tax may be begun at any time.

Subd. 4. **Omission over 25 percent.** If the person required to file the return omits from the return a dollar amount properly includable in it that is in excess of 25 percent of the dollar amount reported in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun, at any time within 6-1/2 years after the return was filed.

Subd. 5. **Time limit for refunds.** Unless otherwise provided in this chapter, a claim for a refund of an overpayment of tax must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time, or one year after the date of assessment, whichever period expires later.

Subd. 6. **Time limit for bad debt refund.** Claims for refund must be filed with the commissioner during the one-year period beginning with the timely filing of the taxpayer's federal income tax return containing the bad debt deduction that is being claimed. Claimants under this subdivision are subject to the notice requirements of section 289A.38, subdivision 7.

Subd. 7. **Consent to extend time.** If before the expiration of the time prescribed in this section for the assessment of the tax, the commissioner and the person filing the return consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Subd. 8. **Suspension of time; bankruptcy proceedings.** The time during which a tax must be assessed or collection proceedings commenced under this chapter is suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after notice to the commissioner that the bankruptcy proceedings have been closed or dismissed, or that the automatic stay has been terminated or has expired.

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

#### **297F.18 INTEREST.**

Subdivision 1. **Interest rate.** When interest is required under this section, interest is computed at the rate specified in section 270C.40.

Subd. 2. **Late payment.** If a tax under this chapter is not paid within the time named by law for payment, the unpaid tax bears interest from the date the tax should have been paid until the date the tax is paid.

Subd. 3. **Extensions.** When an extension of time for payment has been granted, interest must be paid from the date the payment should have been made, if no extension had been granted, until the date the tax is paid.

Subd. 4. **Additional assessments.** When a taxpayer is liable for additional taxes because of a redetermination by the commissioner, or for any other reason, the additional taxes bear interest from the time the tax should have been paid, without regard to an extension allowed, until the date the tax is paid.

Subd. 5. **Erroneous refunds.** In the case of an erroneous refund, interest begins to accrue from the date the refund was paid unless the erroneous refund results from a mistake of the department, in which case no interest or penalty is imposed, unless the deficiency assessment is not satisfied within 60 days of the order.

Subd. 6. **Interest on judgments.** Notwithstanding section 549.09, if judgment is entered in favor of the commissioner with regard to any tax under this chapter, the judgment bears interest at the rate given in section 270C.40 from the date the judgment is entered until the date of payment.

Subd. 7. **Interest on penalties.** (a) A penalty imposed under section 297F.19, subdivisions 2 to 7, bears interest from the date provided in section 270C.40, subdivision 3, to the date of payment of the penalty.

(b) A penalty not included in paragraph (a) bears interest only if it is not paid within ten days from the date of the notice. In that case interest is imposed from the date of notice to the date of payment.

#### **297F.185 REVOCATION OF SALES AND USE TAX PERMITS.**

(a) If a retailer purchases for resale from an unlicensed seller more than 20,000 cigarettes or \$500 or more worth of tobacco products, the commissioner may revoke the person's sales and use tax permit as provided in section 270C.722.

(b) The commissioner may revoke a retailer's sales or use permit as provided in section 270C.722 if the retailer, directly or indirectly, purchases for resale cigarettes without the proper stamp affixed.

#### **297F.19 CIVIL PENALTIES.**

Subdivision 1. **Civil action; general rule.** The commissioner may recover the amount of any tax due and unpaid under this chapter, as well as interest, and any penalty in a civil action. The collection of the tax, interest, or penalty is not a bar to any prosecution under this chapter.

Subd. 2. **Penalty for failure to pay tax.** If a tax imposed by this chapter is not paid within the time specified for payment, a penalty is added to the amount required to be shown as tax. The penalty is five percent of the tax not paid on or before the date specified for payment of the tax if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Subd. 3. **Penalty for failure to make and file return.** If a taxpayer fails to make and file a return within the time prescribed, including an extension, a penalty of five percent of the amount of tax not timely paid is added to the tax.

Subd. 5. **Penalty for intentional disregard of law or rules.** If part of an additional assessment is due to negligence or intentional disregard of the provisions of the applicable tax laws or rules of the commissioner, but without intent to defraud, there must be added to the tax an amount equal to ten percent of the additional assessment.

Subd. 6. **Penalty for repeated failures to file returns or pay taxes.** If there is a pattern by a person of repeated failures to timely file returns or timely pay taxes, and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent of the amount of

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the tax not timely paid as a result of each such subsequent failure is added to the tax. The penalty can be abated under the abatement authority in section 270C.34.

Subd. 7. **Penalty for false or fraudulent return; evasion.** If a person files a false or fraudulent return, or attempts in any manner to evade or defeat a tax or payment of tax, there is imposed on the person a penalty equal to 50 percent of the tax due for the period to which the return related, less amounts paid by the person on the basis of the false or fraudulent return.

Subd. 8. **Payment of penalties.** The penalties imposed by this section are collected and paid in the same manner as taxes.

Subd. 9. **Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

**297F.20 CRIMINAL PENALTIES.**

Subdivision 1. **Penalties for failure to file or pay.** (a) A person or consumer required to file a return, report, or other document with the commissioner who fails to do so is guilty of a misdemeanor.

(b) A person or consumer required to pay or to collect and remit a tax under this chapter, who fails to do so when required, is guilty of a misdemeanor.

Subd. 2. **Penalties for knowing failure to file or pay.** (a) A person or consumer required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

(b) A person or consumer required to pay or to collect and remit a tax under this chapter, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

Subd. 3. **False or fraudulent returns; penalties.** (a) A person or consumer who files with the commissioner a return, report, or other document, or who maintains or provides invoices subject to review by the commissioner under this chapter, known by the person or consumer to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person or consumer who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, invoice, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud is committed with the knowledge or consent of the person or consumer authorized or required to present the return, report, invoice, or other document, is guilty of a felony.

Subd. 4. **Counterfeiting.** Any person who makes, alters, forges, or counterfeits a stamp, or who possesses an altered, forged, or counterfeit stamp is guilty of a felony.

Subd. 5. **Unstamped cigarettes; presumption.** (a) Except as provided in paragraph (b), whenever a package of cigarettes is found in the place of business or in the possession of any person without a proper stamp affixed as required by this chapter, it is presumed that those cigarettes are kept there or held by that person illegally.

(b) This presumption does not apply to:

(1) cigarettes in the place of business or in the possession of a licensed distributor;

(2) cigarettes in the possession of a common carrier or sleeping car company engaged in interstate commerce;

(3) cigarettes held in a public warehouse of first destination in this state, in the unbroken, original shipping containers, subject to delivery or shipping instructions from the manufacturer or a distributor;

(4) cigarettes in the possession of a person other than a distributor in quantities of 200 cigarettes or less, when those cigarettes have had the individual packages or seals broken, and when they are intended for personal use and not to be sold or offered for sale;

(5) cigarettes sold under circumstances in which the tax cannot legally be imposed because of the laws or Constitution of the United States.

Subd. 6. **Unstamped cigarettes; untaxed tobacco products.** (a) A person, other than a licensed distributor or a consumer, who possesses, receives, or transports fewer than 5,000 unstamped cigarettes, or up to \$350 worth of untaxed tobacco products is guilty of a misdemeanor.

(b) A person, other than a licensed distributor or a consumer, who possesses, receives, or transports 5,000 or more, but fewer than 20,001 unstamped cigarettes, or more than \$350 but less than \$1,400 worth of untaxed tobacco products is guilty of a gross misdemeanor.

(c) A person, other than a licensed distributor or a consumer, who possesses, receives, or transports more than 20,000 unstamped cigarettes, or \$1,400 or more worth of untaxed tobacco products is guilty of a felony.

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(d) For purposes of this subdivision, an individual in possession of more than 4,999 unstamped cigarettes, or more than \$350 worth of untaxed tobacco products, is presumed not to be a consumer.

Subd. 7. **Sale of cigarette packages with Indian stamp.** (a) A retailer doing business off of an Indian reservation who sells or offers to sell more than 200 but fewer than 5,000 cigarettes with Indian stamps is guilty of a misdemeanor.

(b) A retailer doing business off of an Indian reservation who sells or offers to sell 5,000 or more, but fewer than 20,001 cigarettes with Indian stamps is guilty of a gross misdemeanor.

(c) A retailer doing business off of an Indian reservation who sells or offers to sell more than 20,000 cigarettes with Indian stamps is guilty of a felony.

Subd. 8. **Sales after license revocation.** A person selling cigarettes or tobacco products after the person's license has been revoked is guilty of a felony.

Subd. 9. **Purchases from unlicensed sellers.** (a) No retailer or subjobber shall purchase cigarettes or tobacco products from any person who is not licensed under section 297F.03 as a licensed distributor or subjobber.

(b) A retailer or subjobber who purchases from an unlicensed seller fewer than 5,000 cigarettes or up to \$350 worth of tobacco products is guilty of a misdemeanor.

(c) A retailer or subjobber who purchases from an unlicensed seller 5,000 or more, but fewer than 20,001 cigarettes or more than \$350 but less than \$1,400 worth of tobacco products is guilty of a gross misdemeanor.

(d) A retailer or subjobber who purchases from an unlicensed seller more than 20,000 cigarettes or \$1,400 or more worth of tobacco products is guilty of a felony.

Subd. 10. **Penalties are additional.** Criminal penalties imposed by this section are in addition to any civil penalties imposed by this chapter.

Subd. 11. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon a criminal offense named in this section, in the proper court within six years after the offense is committed.

Subd. 12. **Other penalties.** A violation of this chapter unless otherwise specified is a misdemeanor.

**297F.21 CONTRABAND.**

Subdivision 1. **Contraband defined.** The following are declared to be contraband and therefore subject to civil and criminal penalties under this chapter:

(a) Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible, and (ii) all devices for the vending of cigarettes in which packages as defined in item (i) are found, including all contents contained within the devices.

(b) A device for the vending of cigarettes and all packages of cigarettes, where the device does not afford at least partial visibility of contents. Where any package exposed to view does not carry the stamp required by this chapter, it shall be presumed that all packages contained in the device are unstamped and contraband.

(c) A device for the vending of cigarettes to which the commissioner or authorized agents have been denied access for the inspection of contents. In lieu of seizure, the commissioner or an agent may seal the device to prevent its use until inspection of contents is permitted.

(d) A device for the vending of cigarettes which does not carry the name and address of the owner, plainly marked and visible from the front of the machine.

(e) A device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner or of a person operating with the consent of the owner for the storage or transportation of more than 5,000 cigarettes which are contraband under this subdivision. When cigarettes are being transported in the course of interstate commerce, or are in movement from either a public warehouse to a distributor upon orders from a manufacturer or distributor, or from one distributor to another, the cigarettes are not contraband, notwithstanding the provisions of clause (a).

(f) A device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner, or of a person operating with the consent of the owner, for the storage or transportation of untaxed tobacco products intended for sale in Minnesota other than those in the possession of a licensed distributor on or before the due date for payment of the tax under section 297F.09, subdivision 2.

(g) Cigarette packages or tobacco products obtained from an unlicensed seller.

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(h) Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7.

(i) Tobacco products on which the tax has not been paid by a licensed distributor.

(j) Any cigarette packages or tobacco products offered for sale or held as inventory for which there is not an invoice from a licensed seller as required under section 297F.13, subdivision 4.

(k) Cigarette packages which have been imported into the United States in violation of United States Code, title 26, section 5754. All cigarettes held in violation of that section shall be presumed to have entered the United States after December 31, 1999, in the absence of proof to the contrary.

(l) Cigarettes subject to forfeiture under section 299F.854, subdivision 5, and cigarette packaging and markings, including the cigarettes contained therein, which do not meet the requirements under section 299F.853, paragraph (a).

Subd. 2. **Seizure.** Cigarettes, tobacco products, or other property made contraband by subdivision 1 may be seized by the commissioner or authorized agents or by any sheriff or other police officer, with or without process, and are subject to forfeiture as provided in subdivision 3.

Subd. 3. **Inventory; judicial determination; appeal; disposition of seized property.** (a) Within ten days after the seizure of any alleged contraband, the person making the seizure shall serve by certified mail an inventory of the property seized on the person from whom the seizure was made, if known, and on any person known or believed to have any right, title, interest, or lien in the property, at the last known address, and file a copy with the commissioner. The notice must include an explanation of the right to demand a judicial forfeiture determination.

(b) Within 60 days after the date of service of the inventory, which is the date of mailing, the person from whom the property was seized or any person claiming an interest in the property may file a demand for a judicial determination of the question as to whether the property was lawfully subject to seizure and forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the commissioner of revenue, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property is \$10,000 or less, the claimant may file an action in conciliation court for recovery of the property. If the value of the seized property is less than \$500, the claimant does not have to pay the conciliation court filing fee.

(c) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the property seized. No responsive pleading is required of the commissioner, and no court fees may be charged for the commissioner's appearance in the matter. The proceedings are governed by the Rules of Civil Procedure. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person who has been served with an inventory unless the person has complied with this subdivision. The court shall decide whether the alleged contraband is contraband, as defined in subdivision 1. The court shall hear the action without a jury and shall try and determine the issues of fact and law involved.

(d) When a judgment of forfeiture is entered, unless the judgment is stayed pending an appeal, the commissioner:

(1) may authorize the forfeited property to be used for the purpose of enforcing a criminal provision of state or federal law;

(2) shall cause forfeited cigarette packages or tobacco products not used under clause (1) to be destroyed and products used under clause (1) to be destroyed upon the completion of use; and

(3) may cause the forfeited property, other than forfeited cigarette packages or tobacco products, to be sold at public auction as provided by law.

The person making a sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation. The balance of the proceeds must be paid 75 percent to the Department of Revenue for deposit as a supplement to its operating fund or similar fund for official use, and 25 percent to the county attorney or other prosecuting agency that handled the court proceeding, if there is one, for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes. If there is no prosecuting authority involved in the forfeiture, the 25 percent of the proceeds otherwise designated for the prosecuting authority must be deposited into the general fund.

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(e) If no demand for judicial determination is made, the property seized is considered forfeited to the state by operation of law and may be disposed of by the commissioner as provided in the case of a judgment of forfeiture.

#### **297F.23 JUDICIAL REVIEW.**

In lieu of an administrative appeal under section 270C.35, a person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under this chapter may, within 60 days from the date of the notice of the order, appeal to the Tax Court in the manner provided under section 271.06.

#### **297F.24 FEE IN LIEU OF SETTLEMENT.**

Subdivision 1. **Fee imposed.** (a) A fee is imposed upon the sale of nonsettlement cigarettes in this state, upon having nonsettlement cigarettes in possession in this state with intent to sell, upon any person engaged in business as a distributor, and upon the use or storage by consumers of nonsettlement cigarettes. The fee equals a rate of 2.5 cents per cigarette.

(b) The purpose of this fee is to:

- (1) ensure that manufacturers of nonsettlement cigarettes pay fees to the state that are comparable to costs attributable to the use of the cigarettes;
- (2) prevent manufacturers of nonsettlement cigarettes from undermining the state's policy of discouraging underage smoking by offering nonsettlement cigarettes at prices substantially below the cigarettes of other manufacturers; and
- (3) fund such other purposes as the legislature determines appropriate.

Subd. 2. **Nonsettlement cigarettes.** For purposes of this section, a "nonsettlement cigarette" means a cigarette manufactured by a person other than a manufacturer that:

(1) is making annual payments to the state of Minnesota under a settlement of the lawsuit styled as State v. Philip Morris Inc., No. C1-94-8565 (Minnesota District Court, Second Judicial District), if the style of cigarettes is included in computation of the payments under the agreement; or

(2) has voluntarily entered into an agreement with the state of Minnesota, approved by the attorney general, agreeing to terms similar to those contained in the settlement agreement, identified in clause (1) including making annual payments to the state, with respect to its national sales of the style of cigarettes, equal to at least 75 percent of the payments that would apply if the manufacturer was one of the four original parties to the settlement agreement required to make annual payments to the state.

Subd. 3. **Collection and administration.** The commissioner shall administer the fee under this section in the same manner as the excise tax imposed under section 297F.05 and all of the provisions of this chapter apply as if the fee were a tax imposed under section 297F.05. The commissioner shall deposit the proceeds of the fee in the general fund.

#### **297F.25 CIGARETTE SALES TAX.**

Subdivision 1. **Imposition.** (a) A tax is imposed on distributors on the sale of cigarettes by a cigarette distributor to a retailer or cigarette subjobber for resale in this state. The tax is equal to the combined tax rate under section 297A.62, multiplied by the weighted average retail price and must be expressed in cents per pack rounded to the nearest one-tenth of a cent. The weighted average retail price must be determined annually, with new rates published by November 1, and effective for sales on or after January 1 of the following year. The weighted average retail price must be established by surveying cigarette retailers statewide in a manner and time determined by the commissioner. The commissioner shall make an inflation adjustment in accordance with the Consumer Price Index for all urban consumers inflation indicator as published in the most recent state budget forecast. The commissioner shall use the inflation factor for the calendar year in which the new tax rate takes effect. If the survey indicates that the average retail price of cigarettes has not increased relative to the average retail price in the previous year's survey, then the commissioner shall not make an inflation adjustment. The determination of the commissioner pursuant to this subdivision is not a "rule" and is not subject to the Administrative Procedure Act contained in chapter 14. For packs of cigarettes with other than 20 cigarettes, the tax must be adjusted proportionally.

(b) Notwithstanding paragraph (a), and in lieu of a survey of cigarette retailers, the tax calculation of the weighted average retail price for the sales of cigarettes from August 1, 2011, through December 31, 2011, shall be calculated by: (1) increasing the average retail price per pack of 20 cigarettes from the most recent survey by the percentage change in a weighted average

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of the presumed legal prices for cigarettes during the year after completion of that survey, as reported and published by the Department of Commerce under section 325D.371; (2) subtracting the sales tax included in the retail price; and (3) adjusting for expected inflation. The rate must be published by May 1 and is effective for sales after July 31. If the weighted average of the presumed legal prices indicates that the average retail price of cigarettes has not increased relative to the average retail price in the most recent survey, then no inflation adjustment must be made. For packs of cigarettes with other than 20 cigarettes, the tax must be adjusted proportionally.

Subd. 2. **Payment.** Each taxpayer must remit payments of the taxes to the commissioner on the same dates prescribed under section 297F.09, subdivision 1, for cigarette tax returns, including the accelerated remittance of the June liability.

Subd. 3. **Return.** A taxpayer must file a return with the commissioner on the same dates prescribed under section 297F.09, subdivision 1, for cigarette tax returns. Notwithstanding any other provisions of this chapter, the tax due on the return is based upon actual stamps purchased during the reporting period.

Subd. 3a. **Consumer use tax; use tax return; cigarette consumer.** (a) On or before the 18th day of each calendar month, a consumer who, during the preceding calendar month, has acquired title to or possession of cigarettes for use or storage in this state, upon which the sales tax imposed by this section has not been paid, shall file a return with the commissioner showing the quantity of cigarettes so acquired or possessed. The return must be made in the form and manner prescribed by the commissioner, and must contain any other information required by the commissioner. The return must be accompanied by a remittance for the full unpaid sales tax liability shown by it.

(b) The tax imposed under paragraph (a) does not apply if (1) the consumer has acquired title to or possession of cigarettes for use or storage in this state in quantities of 200 or fewer in the month, and (2) the cigarettes were carried into this state by that consumer.

Subd. 4. **Form of return.** The return must contain the information and be in the form prescribed by the commissioner.

Subd. 5. **Tax as debt.** The tax that is required to be paid by the distributor is a debt from the retailer or cigarette subjobber to the distributor recoverable at law in the same manner as other debts. A cigarette retailer or subjobber must pay the tax imposed under subdivision 1 to the distributor before the 12th day of the month following the month in which the cigarettes were purchased from the distributor.

Subd. 6. **Sales tax stamp.** Payment of the tax imposed under section 297F.05 and by this section must be evidenced by a dual-purpose single stamp affixed to each package.

Subd. 7. **Administration.** The stamping, audit, assessment, interest, penalty, appeal, refund, and collection provisions applicable to the taxes imposed under this chapter apply to taxes imposed under this section.

Subd. 8. **Deposit of revenues.** Notwithstanding the provisions of section 297F.10, the commissioner shall deposit all revenues, including penalties and interest, derived from the tax imposed by this section, in the general fund.

### 297G.01 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of this chapter, the following terms have the meanings given them unless the language or context clearly indicates that a different meaning is intended.

Subd. 2. **Alcoholic beverage.** "Alcoholic beverage" is any beverage containing more than one-half of one percent alcohol by volume.

Subd. 3. **Brewer.** "Brewer" is a person who manufactures malt liquor for sale.

Subd. 3a. **Cider.** "Cider" means a product that contains not less than one-half of one percent nor more than seven percent alcohol by volume and is made from the alcoholic fermentation of the juice of apples. Cider includes, but is not limited to, flavored, sparkling, and carbonated cider.

Subd. 4. **Collector.** "Collector" is a person who collects commemorative bottles for their use and enjoyment as collector's items and not for the consumption of the beverage contained in them. The term does not include licensed wholesalers or retailers of alcoholic beverages.

Subd. 5. **Commemorative bottles.** "Commemorative bottles" are ceramic commemorative bottles or other specially designed decanters which have value as collector's items and which contain an alcoholic beverage.

Subd. 6. **Commissioner.** "Commissioner" is the commissioner of revenue.

Subd. 7. **Distilled spirits.** "Distilled spirits" means:

(1) intoxicating liquors, including ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures, for nonindustrial use;

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(2) any beverage that would be classified as a flavored malt beverage except that the alcohol contribution from flavors and other nonbeverage materials exceeds 49 percent of the alcohol content of the product; or

(3) any beverage that would be classified as a flavored malt beverage except that the beverage contains more than six percent alcohol by volume, and more than 1.5 percent of the volume of the finished product consists of alcohol derived from flavors and other nonbeverage ingredients that contain alcohol.

Subd. 8. **Fermented malt beverages.** "Fermented malt beverages" is any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

Subd. 8a. **Flavored malt beverage.** (a) "Flavored malt beverage" means a fermented malt beverage that:

(1) contains six percent or less alcohol by volume and derives at least 51 percent of its alcohol content by volume from the fermentation of grain-derived carbohydrates, as long as not more than 49 percent of the beverage's overall alcohol content is obtained from flavors and other added nonbeverage ingredients containing alcohol; or

(2) contains more than six percent alcohol by volume that derives not more than 1.5 percent of its overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(b) Flavored malt beverage does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

Subd. 9. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code as defined in section 289A.02, subdivision 7.

Subd. 10. **Intoxicating liquor.** "Intoxicating liquor" is ethyl alcohol, distilled spirits, fermented, spirituous, vinous, and fermented malt beverages containing more than 3.2 percent of alcohol by weight.

Subd. 11. **Liqueur-filled candy.** "Liqueur-filled candy" is any confectionery containing more than one-half of one percent alcohol by volume in liquid form that is intended for or capable of beverage use.

Subd. 12. **Liquor Act.** For purposes of this chapter, the terms defined in section 340A.101, have the meanings given them in that section except as provided in this section.

Subd. 13. **Manufacturer.** "Manufacturer" is a person who, by a process of manufacturing, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces intoxicating liquor for sale.

Subd. 14. **Miniatures.** "Miniatures" are containers of distilled spirits of two fluid ounces or less or 50 milliliters or less.

Subd. 15. **Person.** "Person" means an individual or any entity engaged in the sale of distilled spirits, wine, or fermented malt beverages.

Subd. 16. **Retailer.** "Retailer" means a person engaged in this state in the business of selling, or offering to sell, distilled spirits, wine, or fermented malt beverages.

Subd. 17. **Table or sparkling wine.** "Table or sparkling wine" is a beverage made without rectification or fortification and containing not more than 25 percent alcohol by volume and made by the fermentation of grapes, grape juice, other fruits, or honey.

Subd. 18. **3.2 percent malt liquor.** "3.2 percent malt liquor" is a fermented malt beverage containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight.

Subd. 19. **Wholesaler.** "Wholesaler" is a person who sells alcoholic beverages to persons to whom sale is permitted under section 340A.310, from a stock maintained in a warehouse in the state.

Subd. 20. **Wine.** "Wine" is the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake, in each instance containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. Wine does not include distilled spirits as defined in subdivision 7.

Subd. 21. **Low-alcohol dairy cocktail.** "Low-alcohol dairy cocktail" means a premixed cocktail, or any other product except liqueur-filled candy, that:

(1) consists primarily of milk products;

(2) contains distilled spirits;

(3) is drinkable as a beverage or is promoted as an alcoholic product; and



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(4) contains less than 3.2 percent alcohol by volume.

**297G.02 ADMINISTRATION.**

Subdivision 1. **Enforcement responsibility.** The commissioners of public safety and revenue shall enforce and administer the provisions of this chapter.

Subd. 2. **Nonapplicability.** This chapter does not apply to:

- (1) medicines intended for therapeutic purposes and not intended as a beverage;
- (2) industrial alcohol designed for mechanical, chemical, scientific, pharmaceutical, or industrial purposes; or
- (3) nonpotable compounds or preparations containing alcohol.

Subd. 3. **Powers of commissioner of revenue.** The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings under this chapter and, in connection with such investigations, inquiries, and hearings, the commissioner and the duly authorized agents shall have all the powers conferred upon the commissioner and the commissioner's examiners by chapter 270C, and the provisions of that chapter shall apply to all such investigations, inquiries, and hearings.

Subd. 4. **Expenses of administration.** Expenses for the administration of this chapter shall be paid out of appropriations to the commissioner for the administration of this chapter and shall include fees and expenses incurred by the attorney general and any county attorney in litigation in connection with the enforcement of this chapter. Expenses also include all court costs and expenses.

**297G.03 DISTILLED SPIRITS AND WINE; RATE OF TAX.**

Subdivision 1. **General rate; distilled spirits and wine.** The following excise tax is imposed on all distilled spirits and wine manufactured, imported, sold, or possessed in this state:

	Standard	Metric
(a) Distilled spirits, liqueurs, cordials, and specialties regardless of alcohol content (excluding ethyl alcohol)	\$ 5.03 per gallon	\$ 1.33 per liter
(b) Wine containing 14 percent or less alcohol by volume (except cider as defined in section 297G.01, subdivision 3a)	\$ .30 per gallon	\$ .08 per liter
(c) Wine containing more than 14 percent but not more than 21 percent alcohol by volume	\$ .95 per gallon	\$ .25 per liter
(d) Wine containing more than 21 percent but not more than 24 percent alcohol by volume	\$ 1.82 per gallon	\$ .48 per liter
(e) Wine containing more than 24 percent alcohol by volume	\$ 3.52 per gallon	\$ .93 per liter
(f) Natural and artificial sparkling wines containing alcohol	\$ 1.82 per gallon	\$ .48 per liter
(g) Cider as defined in section 297G.01, subdivision 3a	\$ .15 per gallon	\$ .04 per liter
(h) Low-alcohol dairy cocktails	\$ .08 per gallon	\$ .02 per liter

In computing the tax on a package of distilled spirits or wine, a proportional tax at a like rate on all fractional parts of a gallon or liter must be paid, except that the tax on a fractional part of a gallon less than 1/16 of a gallon is the same as for 1/16 of a gallon.

Subd. 2. **Tax on miniatures; distilled spirits.** The tax on miniatures is 14 cents per bottle.

Subd. 3. **Tax is metric.** The metric tax is imposed on all products taxable under this section when the net contents are stated in metric units of measure. The commissioner may establish by rule a date and procedure for the conversion of excise tax computation and reporting from rates expressed in gallons to rates expressed in metric volumes. The official conversion factor is one liter equals 0.264172 United States gallons.

Subd. 4. **Bottle tax.** A tax of one cent is imposed on each bottle or container of distilled spirits and wine except as provided in 297G.07, subdivision 3. The wholesaler is responsible for

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the payment of this tax when the bottles of distilled spirits and wine are removed from inventory for sale, delivery, or shipment.

**Subd. 5. Microdistillery credit.** (a) A qualified distiller producing distilled spirits is entitled to a tax credit of \$1.33 per liter on 100,000 liters sold in any fiscal year beginning July 1. A qualified distiller may take the credit on the 18th day of each month, but the total credit allowed may not exceed in any fiscal year the lesser of:

- (1) the liability for tax; or
- (2) \$133,000.

(b) For purposes of this subdivision, "qualified distiller" means a microdistillery qualifying under section 340A.101, subdivision 17a, in the calendar year immediately preceding the calendar year for which the credit under this subdivision is claimed.

#### **297G.031 FARM WINERY.**

Farm wineries licensed under section 340A.315 shall be treated as wholesalers for the excise tax imposed on certain wines. Tax payments and returns are required in relation to samples given and in relation to the sale of wine on the farm winery premises permitted under chapter 340A. Returns must be made in a form and manner prescribed by the commissioner, and must contain any other information required by the commissioner.

#### **297G.032 MICRODISTILLERIES.**

A microdistillery, licensed under section 340A.301, is a wholesaler for purposes of the excise tax imposed on distilled spirits given by the microdistillery as samples or sold in cocktail rooms permitted under chapter 340A. Returns must be made in a form and manner prescribed by the commissioner, and must contain any other information required by the commissioner.

#### **297G.04 FERMENTED MALT BEVERAGES; RATE OF TAX.**

Subdivision 1. **Tax imposed.** The following excise tax is imposed on all fermented malt beverages that are imported, directly or indirectly sold, or possessed in this state:

- (1) on fermented malt beverages containing not more than 3.2 percent alcohol by weight, \$2.40 per 31-gallon barrel; and
- (2) on fermented malt beverages containing more than 3.2 percent alcohol by weight, \$4.60 per 31-gallon barrel.

For fractions of a 31-gallon barrel, the tax rate is calculated proportionally.

Subd. 2. **Tax credit.** A qualified brewer producing fermented malt beverages is entitled to a tax credit of \$4.60 per barrel on 25,000 barrels sold in any fiscal year beginning July 1, regardless of the alcohol content of the product. Qualified brewers may take the credit on the 18th day of each month, but the total credit allowed may not exceed in any fiscal year the lesser of:

- (1) the liability for tax; or
- (2) \$115,000.

For purposes of this subdivision, a "qualified brewer" means a brewer, whether or not located in this state, manufacturing less than 250,000 barrels of fermented malt beverages in the calendar year immediately preceding the fiscal year for which the credit under this subdivision is claimed. In determining the number of barrels, all brands or labels of a brewer must be combined. All facilities for the manufacture of fermented malt beverages owned or controlled by the same person, corporation, or other entity must be treated as a single brewer.

#### **297G.05 USE TAX; RATE OF TAX.**

Subdivision 1. **Wine and distilled spirits.** A tax is imposed on the use or storage by consumers of wine and distilled spirits in this state, and on such consumers, at the rates specified in section 297G.03, subdivision 1.

Subd. 2. **Fermented malt beverages.** A tax is imposed on the use or storage by consumers of fermented malt beverages in this state, and on such consumers, at the rates specified in section 297G.04, subdivision 1.

Subd. 3. **Tax provisions applicable to consumers.** All of the provisions of this chapter relating to the correction of returns, deficiency assessments, protests, hearings, interest and penalties, and collection of taxes, apply to consumers.

#### **297G.06 TAX AS PERSONAL DEBT.**

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The tax imposed by this chapter, and interest and penalties imposed with respect to it, is a personal debt of the person required to file a return from the time the liability for it arises, regardless of when the time for payment of the liability occurs. In the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, the debt is that of the person in the person's official or fiduciary capacity only, unless the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties. In that case, the person is personally liable for the deficiency.

#### **297G.07 EXEMPTIONS FROM TAX.**

Subdivision 1. **Exemptions.** The following are not subject to the excise tax:

- (1) Sales by a manufacturer, brewer, or wholesaler for shipment outside the state in interstate commerce.
- (2) Alcoholic beverages sold or transferred between Minnesota wholesalers.
- (3) Sales to common carriers engaged in interstate transportation of passengers, except as provided in this chapter.
- (4) Malt beverages served by a brewery for on-premise consumption at no charge, or distributed to brewery employees for on-premise consumption under a labor contract.
- (5) Shipments of wine to Minnesota residents under section 340A.417.
- (6) Fruit juices naturally fermented or beer naturally brewed in the home for family use and not sold or offered for sale.
- (7) Sales of wine for sacramental purposes under section 340A.316.
- (8) Alcoholic beverages sold to authorized manufacturers of food products or pharmaceutical firms. The alcoholic beverage must be used exclusively in the manufacture of food products or medicines. For purposes of this clause, "manufacturer" means a person who manufactures food products intended for sale to wholesalers or retailers for ultimate sale to the consumer.
- (9) Liqueur-filled candy.
- (10) Sales to a federal agency, that the state of Minnesota is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of Minnesota.
- (11) Sales to Indian tribes as defined in section 297G.08.
- (12) Shipments of intoxicating liquor from foreign countries to diplomatic personnel of foreign countries assigned to service in this state.
- (13) Shipments of bulk distilled spirits or bulk wine to farm wineries licensed under section 340A.315 for input to the final product.

Subd. 2. **Importation by individuals.** (a) A person, other than a person under the age of 21 years, entering Minnesota from another state may have in possession one liter of intoxicating liquor or 288 ounces of fermented malt beverages without the required payment of the Minnesota excise tax, provided the alcoholic beverages accompany the person into this state and will not be offered for sale or used for any commercial purposes.

(b) A person, other than a person under the age of 21 years, entering Minnesota from a foreign country may have in possession four liters of intoxicating liquor or ten quarts (320 ounces) of fermented malt beverages without the required payment of the Minnesota excise tax, provided the alcoholic beverages accompany the person into this state and will not be offered for sale or used for any commercial purposes.

(c) A collector of commemorative bottles, other than a person under the age of 21 years, entering Minnesota from another state may have in possession 12 or fewer commemorative bottles without the required payment of the Minnesota excise tax.

(d) This subdivision does not apply to consignments of alcoholic beverages shipped into this state by holders of Minnesota import licenses or Minnesota manufacturers and wholesalers when licensed by the commissioner of public safety or to common carriers with licenses to sell intoxicating liquor in more than one state.

Subd. 3. **Exemptions from bottle tax.** The following are exempt from the bottle tax:

- (1) miniatures of distilled spirits and wines;
- (2) containers of fermented malt beverage;
- (3) containers of intoxicating liquor or wine holding less than 200 milliliters;
- (4) containers of alcoholic beverages sold and shipped to dealers, wineries, or distillers in other states;
- (5) containers of alcoholic beverages sold to other Minnesota wholesalers;
- (6) containers of alcoholic beverages sold to common carriers engaged in interstate commerce;
- (7) containers of wine intended exclusively for sacramental purposes;

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(8) containers of alcoholic beverages sold to authorized food processors or pharmaceutical firms for use exclusively in the manufacturing of food products or medicines; and

(9) sales to a federal agency, that the state of Minnesota is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of Minnesota.

#### **297G.08 SALES TO INDIAN TRIBES.**

Subdivision 1. **Wholesalers.** A wholesaler may set aside the part of the wholesaler's stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of the Interior, without paying the tax required by this chapter. The amount of untaxed stock that wholesalers may deliver to an Indian reservation is limited to amounts necessary to meet the personal consumption needs of qualified purchasers. When shipping or delivering untaxed stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler shall send the duplicate to the commissioner not later than the 18th day of the following calendar month. If a wholesaler fails to comply with the requirements of this section, the commissioner shall revoke the permission granted to the wholesaler to keep a stock of untaxed goods.

Subd. 2. **Retailers.** Retailers who are Indian tribal organizations may keep untaxed stock intended for sale to qualified purchasers.

Subd. 3. **Qualified purchasers.** A qualified purchaser of untaxed liquor means only an enrolled member of the Indian tribe that is offering the liquor for sale.

Subd. 4. **Sales to nonqualified buyers.** A retailer who sells or otherwise disposes of untaxed liquor other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by this chapter and remit the tax to the Department of Revenue at the same time and manner as required by this chapter. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax and the commissioner may seize any liquor destined to be delivered to the retailer. The procedures outlined in section 297G.20 apply to the seized liquor. The proceeds of the sale of the liquor may be applied to any tax liability owed by the retailer after deducting all costs and expenses.

This section does not relieve the buyer or possessor of untaxed liquor from personal liability for the tax.

#### **297G.09 RETURNS; PAYMENT OF TAX.**

Subdivision 1. **Monthly returns; manufacturers, wholesalers, brewers, or importers.** On or before the 18th day of each calendar month following the month in which a licensed manufacturer or wholesaler first sells wine and distilled spirits within the state, or a brewer or importer first sells or imports fermented malt beverages, or a wholesaler knowingly acquires title to or possession of untaxed fermented malt beverages, the licensed manufacturer, wholesaler, brewer, or importer liable for the excise tax must file a return with the commissioner, and in addition must keep records and render reports as required by the commissioner. Returns must be made in a form and manner prescribed by the commissioner, and must contain any other information required by the commissioner. Returns must be accompanied by a remittance for the full unpaid tax liability. Returns must be filed regardless of whether a tax is due.

Subd. 2. **Monthly use tax returns; consumers.** On or before the 18th day of each calendar month, a consumer who has acquired title to or possession of wine, distilled spirits, or fermented malt beverages for use or storage in this state, upon which wine, distilled spirits, or fermented malt beverages the tax imposed by this chapter has not been paid, shall file a return with the commissioner in the month following the month in which the consumer obtains title to or possession of the wine, distilled spirits, or fermented malt beverages. Returns must be made in a form and manner prescribed by the commissioner and must contain any other information required by the commissioner. Returns must be accompanied by a remittance for the full unpaid tax liability.

Subd. 3. **Common carrier returns.** A common carrier engaged in interstate transportation of passengers must file monthly reports together with the tax payment on the sale of alcoholic beverages sold in Minnesota. The report and payment must be filed by the 18th day of the month following the month in which the sale took place. A common carrier is permitted to use a formula for the allocation of the total sales of alcoholic beverages among states on the basis of passenger miles in each state or some other method of allocation if written approval is received from the commissioner.

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Subd. 4. **Extensions.** When in the commissioner's judgment, good cause exists, the commissioner may extend the time for filing liquor tax returns for not more than six months. The commissioner may require the taxpayer to file a tentative return when the regularly required return is due, and pay a tax on the basis of the tentative return at the times required for the payment of taxes on the basis of the regularly required return.

Subd. 6. **Electronic payments.** A licensed brewer, importer, or wholesaler having an excise tax liability of \$10,000 or more during a fiscal year ending June 30 must remit all excise tax liabilities in all subsequent calendar years by electronic means.

Subd. 7. **Order payments credited.** All payments received may, in the discretion of the commissioner, be credited first to the oldest liability not secured by a judgment or lien, but in all cases must be credited first to penalties, next to interest, and then to the tax due.

Subd. 8. **Interest.** The amount of tax not timely paid bears interest at the rate specified in section 270C.40 from the time the tax should have been paid until paid. Any penalty imposed by this chapter bears interest from the date provided in section 270C.40, subdivision 3, to the date of payment of the penalty. Any interest and penalty is added to the tax and collected as a part of it.

Subd. 9. **Accelerated tax payment; penalty.** A person liable for tax under this chapter having a liability of \$250,000 or more during a fiscal year ending June 30, shall remit the June liability for the next year in the following manner:

(a) Two business days before June 30 of the year, the taxpayer shall remit the actual May liability and 81.4 percent of the estimated June liability to the commissioner and file the return in the form and manner prescribed by the commissioner.

(b) On or before August 18 of the year, the taxpayer shall submit a return showing the actual June liability and pay any additional amount of tax not remitted in June. A penalty is imposed equal to ten percent of the amount of June liability required to be paid in June less the amount remitted in June. However, the penalty is not imposed if the amount remitted in June equals the lesser of:

- (1) 81.4 percent of the actual June liability; or
- (2) 81.4 percent of the preceding May liability.

Subd. 10. **Quarterly and annual payments and returns.** (a) If a manufacturer, wholesaler, brewer, or importer has an average liquor tax liability equal to or less than \$500 per month in any quarter of a calendar year, and has substantially complied with the state tax laws during the preceding four calendar quarters, the manufacturer, wholesaler, brewer, or importer may request authorization to file and pay the taxes quarterly in subsequent calendar quarters. The authorization remains in effect during the period in which the manufacturer's, wholesaler's, brewer's, or importer's quarterly returns reflect liquor tax liabilities of less than \$1,500 and there is continued compliance with state tax laws.

(b) If a manufacturer, wholesaler, brewer, or importer has an average liquor tax liability equal to or less than \$100 per month during a calendar year, and has substantially complied with the state tax laws during that period, the manufacturer, wholesaler, brewer, or importer may request authorization to file and pay the taxes annually in subsequent years. The authorization remains in effect during the period in which the manufacturer's, wholesaler's, brewer's, or importer's annual returns reflect liquor tax liabilities of less than \$1,200 and there is continued compliance with state tax laws.

(c) The commissioner may also grant quarterly or annual filing and payment authorizations to manufacturers, wholesalers, brewers, or importers if the commissioner concludes that the manufacturer's, wholesaler's, brewer's, or importer's future tax liabilities will be less than the monthly totals identified in paragraphs (a) and (b). An authorization granted under this paragraph is subject to the same conditions as an authorization granted under paragraphs (a) and (b).

(d) The annual tax return and payments must be filed and paid on or before the 18th day of January following the calendar year. The quarterly returns and payments must be filed and paid on or before April 18 for the quarter ending March 31, on or before July 18 for the quarter ending June 30, on or before October 18 for the quarter ending September 30, and on or before January 18 for the quarter ending December 31.

#### **297G.10 DEPOSIT OF PROCEEDS.**

All tax revenues and other receipts payable to the state under this chapter must be paid into the state treasury and credited to the general fund.

#### **297G.11 INFORMATIONAL REPORTS.**

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The following persons shall file with the commissioner a monthly informational report in the form and manner prescribed by the commissioner:

- (1) a manufacturer, wholesaler, and importer licensed to ship distilled spirits or wine into Minnesota;
- (2) a person who manufactures distilled spirits or wine in Minnesota;
- (3) any other person who imports distilled spirits or wine into Minnesota;
- (4) a person who possesses, receives, stores, or warehouses distilled spirits or wine in Minnesota, upon which the tax imposed by this chapter has not been paid; and
- (5) a person who possesses, receives, stores, or warehouses distilled spirits or wine in Minnesota, which are required to give bond as required by the Internal Revenue Code, subtitle E, chapter 51.

No payment of any tax is required to be remitted with this report. The report must be filed on or before the tenth day following the end of each calendar month, regardless of whether or not the person shipped, manufactured, possessed, received, stored, or warehoused any distilled spirits or wine into or within Minnesota during the previous month, unless the commissioner determines that a longer filing period is appropriate for a particular person. A person failing to file this report is subject to the civil or criminal penalties imposed by this chapter.

This section does not apply to the lawful importation of wine and distilled spirits under section 297G.07, subdivision 2, nor to any lawful manufacture of wine or distilled spirits within the state for personal consumption.

#### **297G.12 REFUNDS.**

Subdivision 1. **Overpayment of tax.** An overpayment of the tax imposed under this chapter may be refunded to the taxpayer, provided that the claim for refund is filed within the time prescribed under section 297G.16.

Subd. 2. **Products destroyed.** The commissioner may refund to a taxpayer the amount of tax paid under this chapter on intoxicating liquor or fermented malt beverages which become unfit for human consumption and are destroyed under an order by a federal, state, or local agency while being held for sale by a licensed retailer. The destruction must meet the requirements of the environmental laws of this state.

Subd. 3. **Wholesaler refund for breakage of inventory.** The commissioner may refund to a wholesaler the amount of tax paid under this chapter for the breakage of inventory not subject to reimbursement from any insurance proceeds. The commissioner may prescribe the method of proof for obtaining the refund.

Subd. 4. **Retailer refund for breakage of inventory.** Refunds for breakage of inventory may be made to retailers only if satisfactory proof is presented to the commissioner by the wholesaler and the licensed retailer that the retailer was not indemnified by insurance for the tax. The commissioner may prescribe the method of proof required for obtaining the refund.

Subd. 5. **Bad debts.** The commissioner may adopt rules providing a refund of the tax paid under this chapter on intoxicating liquor or wine if the tax paid qualifies as a bad debt under section 166(a) of the Internal Revenue Code.

Subd. 6. **Credit against tax.** The commissioner may credit the amount determined under this section against taxes otherwise payable under this chapter by the taxpayer.

Subd. 7. **Source of refund.** There is appropriated annually from the general fund to the commissioner the sums necessary to make the refunds provided by this section.

#### **297G.13 INSPECTION RIGHTS.**

The commissioner of public safety or the commissioner of revenue, or their duly authorized employees, may, at any reasonable time, without notice and without a search warrant, enter in and upon a licensed premises, and examine the books, papers, and records of a brewer, manufacturer, wholesaler, or retailer for the purpose of determining whether the excise tax has been paid, and may in addition inspect any premises where fermented malt beverages are manufactured, sold, offered for sale, possessed, or stored for the purpose of determining whether the party is in full compliance with the provisions of this chapter.

#### **297G.14 PHYSICAL INVENTORY.**

Subd. 9. **Physical inventory.** The commissioner or the commissioner's authorized agents may, as considered necessary, require a manufacturer, wholesaler, or retailer to furnish a physical

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inventory of all wine and distilled spirits in stock. The inventory must contain the information that the commissioner requests and must be certified by an officer of the corporation.

#### **297G.16 STATUTES OF LIMITATIONS.**

Subdivision 1. **General rule.** Except as otherwise provided in this chapter, the amount of any tax due must be assessed within 3-1/2 years after a return is filed.

Subd. 2. **Date of filing.** For the purposes of this section, a return filed before the last day prescribed by law for filing is considered filed on the last day.

Subd. 3. **False or fraudulent return or claim for refund; no return.** When a person required to file a return under this chapter files a false or fraudulent return or claim for refund, or fails to file a return, the tax may be assessed, and a proceeding in court for the collection of such tax may be begun at any time.

Subd. 4. **Omission in excess of 25 percent.** If a person required to file a return omits from the return an amount properly includable in it that is in excess of 25 percent of the amount of tax reported in the return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun, at any time within 6-1/2 years after the return was filed.

Subd. 5. **Time limit for refunds.** Unless otherwise provided in this chapter, a claim for a refund of an overpayment of tax must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time, or within one year from the date of an order assessing tax or from the date of a return filed by the commissioner, upon payment in full of the tax, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later.

Subd. 6. **Time limit for a destruction order refund.** Claims for refund under section 297G.12, subdivision 2, must be filed with the commissioner within one year from the date of the breakage or destruction order.

Subd. 7. **Time limit for a bad debt deduction.** Claims for refund must be filed with the commissioner within one year of the filing of the taxpayer's income tax return containing the bad debt deduction that is being claimed. Claimants under this subdivision are subject to the notice requirements of section 289A.38, subdivision 7.

Subd. 8. **Consent to extend time.** If, before the expiration of the time prescribed in this chapter for the assessment of the tax, the commissioner and the person filing the return consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time before the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Subd. 9. **Bankruptcy; suspension of time.** The running of the period during which a tax must be assessed or collection proceedings commenced is suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after either notice to the commissioner that the bankruptcy proceedings have been closed or dismissed, or the automatic stay has been terminated or has expired, whichever occurs first.

The suspension of the statute of limitations under this section applies to the person the petition in bankruptcy is filed against and other persons who may also be wholly or partially liable for the tax.

#### **297G.17 INTEREST.**

Subdivision 1. **Interest rate.** When interest is required under this section, interest is computed at the rate specified in section 270C.40.

Subd. 2. **Late payment.** If a tax under this chapter is not paid within the time named by law for payment, the unpaid tax bears interest from the date the tax should have been paid until the date the tax is paid.

Subd. 3. **Extensions.** When an extension of time for payment has been granted, interest must be paid from the date the payment should have been made, if no extension had been granted, until the date the tax is paid.

Subd. 4. **Additional assessments.** When a taxpayer is liable for additional taxes because of a redetermination by the commissioner, or for any other reason, the additional taxes bear interest from the time the tax should have been paid, without regard to an extension allowed, until the date the tax is paid.

Subd. 5. **Erroneous refunds or credits.** In the case of an erroneous refund or credit, interest begins to accrue from the date the refund or credit was paid unless the erroneous refund or credit results from a mistake of the department, in which case no interest or penalty is imposed, unless the deficiency assessment is not satisfied within 60 days of the order.

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Subd. 6. **Interest on judgments.** Notwithstanding section 549.09, if judgment is entered in favor of the commissioner with regard to any tax under this chapter, the judgment bears interest at the rate given in section 270C.40 from the date the judgment is entered until the date of payment.

Subd. 7. **Interest on penalties.** (a) A penalty imposed under section 297G.18, subdivisions 2 to 7, bears interest from the date provided in section 270C.40, subdivision 3, to the date of payment of the penalty.

(b) A penalty not included in paragraph (a) bears interest only if it is not paid within ten days from the date of the notice. In that case interest is imposed from the date of notice to the date of payment.

Subd. 8. **Interest on overpayments.** Interest must be paid on an overpayment refunded or credited to the taxpayer from the date of payment of the tax until the date the refund is paid or credited.

#### **297G.18 CIVIL PENALTIES.**

Subdivision 1. **General rule.** The commissioner may recover the amount of any tax due under this chapter, as well as any interest and penalty in a civil action. The collection of a tax, interest, or penalty does not bar any prosecution under this chapter.

Subd. 2. **Penalty for failure to pay tax.** If a tax imposed by this chapter is not paid within the time specified for payment, a penalty is added to the amount required to be shown as tax. The penalty is five percent of the tax not paid on or before the date specified for payment of the tax if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Subd. 3. **Penalty for failure to make and file return.** If a taxpayer fails to make and file a return within the time prescribed, including any extension, a penalty of five percent of the amount of tax not timely paid is added to the tax. If no tax is due, a penalty of \$25 is assessed for each unfiled return.

Subd. 5. **Penalty for intentional disregard of law or rules.** If part of an additional assessment is due to negligence or intentional disregard of the provisions of the applicable tax laws or rules of the commissioner, but without an intent to defraud, there must be added to the tax an amount equal to ten percent of the additional assessment.

Subd. 6. **Penalty for repeated failures to file or pay taxes.** If there is a pattern by a person of repeated failures to timely file returns or timely pay taxes, and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent of the amount of tax not timely paid as a result of each such subsequent failure is added to the tax. The penalty can be abated under the abatement authority in section 270C.34.

Subd. 7. **Penalty for false or fraudulent return; evasion.** If a person files a false or fraudulent return, or attempts in any manner to evade or defeat a tax or payment of tax, there is imposed on the person a penalty equal to 50 percent of the tax due for the period to which the return related, less amounts paid by the person on the basis of the false or fraudulent return.

Subd. 8. **Revocation or suspension of license.** The commissioner may certify to the commissioner of public safety any failure to pay taxes when due as a violation of the statute relating to the sale of intoxicating liquor for possible revocation or suspension of license.

Subd. 9. **Failure to file informational returns.** A person required to file informational returns or reports that fails to do so as required by this chapter is assessed a \$25 penalty for each month the return remains unfiled.

Subd. 10. **Payment of penalties.** The penalties imposed by this section are collected and paid in the same manner as taxes.

Subd. 11. **Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

#### **297G.19 CRIMINAL PENALTIES.**

Subdivision 1. **Penalties for failure to file or pay.** (a) A person required to file a return, report, or other document with the commissioner who fails to do so is guilty of a misdemeanor.

(b) A person required to pay or to collect and remit a tax under this chapter, who fails to do so when required, is guilty of a misdemeanor.

Subd. 2. **Penalties for knowing failure to file or pay.** (a) A person required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.



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(b) A person required to pay or to collect and remit a tax under this chapter, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

Subd. 3. **False or fraudulent returns; penalties.** (a) A person who files with the commissioner a return, report, or other document, known by the person to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.

Subd. 4. **Importation from another state.** (a) A person entering Minnesota from another state who imports or possesses more than one liter, but fewer than 25 liters of untaxed intoxicating liquor, or more than 288 ounces (nine quarts), but fewer than 6,800 ounces (225 quarts) of untaxed fermented malt beverages is guilty of a misdemeanor.

(b) A person entering Minnesota from another state who imports or possesses 25 liters or more, but fewer than 225 liters of untaxed intoxicating liquor, or 6,800 ounces (225 quarts) or more, but fewer than 34,000 ounces (1,225 quarts) of untaxed fermented malt beverages is guilty of a gross misdemeanor.

(c) A person entering Minnesota from another state who imports or possesses 225 liters or more of untaxed intoxicating liquor, or 34,000 ounces (1,225 quarts) or more of untaxed fermented malt beverages is guilty of a felony.

Subd. 5. **Importation from a foreign country.** (a) A person entering Minnesota from a foreign country who imports or possesses more than four liters, but fewer than 100 liters of untaxed intoxicating liquor, or more than 320 ounces (ten quarts), but fewer than 8,000 ounces (250 quarts) of untaxed fermented malt beverages is guilty of a misdemeanor.

(b) A person entering Minnesota from a foreign country who imports or possesses 100 liters or more, but fewer than 500 liters of untaxed intoxicating liquor, or 8,000 ounces (250 quarts) or more, but fewer than 40,000 ounces (1,250 quarts) of untaxed fermented malt beverages is guilty of a gross misdemeanor.

(c) A person entering Minnesota from a foreign country who imports or possesses 500 liters or more of untaxed intoxicating liquor, or 40,000 ounces (1,250 quarts) or more of untaxed fermented malt beverages is guilty of a felony.

Subd. 6. **Penalties are additional.** Criminal penalties imposed by this section are in addition to any civil penalties imposed by this chapter.

Subd. 7. **Other penalties.** Any violation of this chapter unless otherwise specified is a misdemeanor.

Subd. 8. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon a criminal offense named in this section, in the proper court within six years after the offense is committed.

**297G.20 CONTRABAND.**

Subdivision 1. **Contraband defined.** The following are declared to be contraband and therefore subject to civil and criminal penalties and seizure under this chapter:

(1) All distilled spirits, wine, and fermented malt beverages possessed or held with intent to sell without payment of an excise tax.

(2) All distilled spirits, wine, and fermented malt beverages sold without payment of an excise tax.

(3) All distilled spirits, wine, and fermented malt beverages transported without payment of an excise tax.

(4) Devices including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner, or of a person operating with the consent of the owner, for the storage or transportation of distilled spirits, wine, and fermented malt beverages which are contraband under this subdivision.

Subd. 2. **Exception.** When distilled spirits, wine, and fermented malt beverages are being transported in the course of interstate commerce, or are in movement from either a public warehouse to a wholesaler upon orders from a manufacturer or wholesaler, or from one wholesaler to another, the distilled spirits, wine, and fermented malt beverages are not contraband, notwithstanding the provisions of subdivision 1.

Subd. 3. **Seizure.** Distilled spirits, wine, fermented malt beverages, or other property made contraband by subdivision 1 may be seized by the commissioner of revenue or public safety and

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their authorized agents or by any sheriff or other police officer, with or without process, and are subject to forfeiture as provided in subdivision 4.

Subd. 4. **Inventory; judicial determination; appeal; disposition of seized property.** (a) Within ten days after the seizure of alleged contraband, the person making the seizure shall serve by certified mail an inventory of the property seized on the person from whom the property was seized, if known, and on any person known or believed to have any right, title, interest, or lien in the property, at the last known address, and file a copy with both the commissioners of revenue and public safety. The notice must include an explanation of the right to demand a judicial forfeiture determination.

(b) Within 60 days after the date of service of the inventory, which is the date of mailing, the person from whom the property was seized or any person claiming an interest in the property may file a demand for judicial determination of whether the property was lawfully subject to seizure and forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the commissioner of revenue or public safety, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property or vehicle is \$10,000 or less, the claimant may file an action in conciliation court for recovery of the property. If the value of the seized property is less than \$500, the claimant does not have to pay the conciliation court filing fee.

(c) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the property seized. No responsive pleading is required of the commissioner of revenue or public safety and no court fees may be charged for either commissioner's appearance in the matter. The proceedings are governed by the Rules of Civil Procedure. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person who has been served with an inventory unless the person has complied with this subdivision. The court shall hear the action without a jury and determine the issues of fact and law involved.

(d) If a judgment of forfeiture is entered, the seizing authority may, unless the judgment is stayed pending an appeal, either:

- (1) cause the forfeited property, other than a vehicle, to be destroyed; or
- (2) cause it to be sold at a public auction as provided by law.

The person making a sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation. The balance of the proceeds must be paid 75 percent to the seizing authority for deposit as a supplement to its operating fund or similar fund for official use, and 25 percent to the county attorney or other prosecuting agency that handled the court proceeding, if there is one, for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes. If there is no prosecuting authority involved in the forfeiture, the 25 percent of the proceeds otherwise designated for the prosecuting authority must be deposited into the general fund.

(e) If no demand is made, the property seized is considered forfeited to the seizing authority by operation of law and may be disposed of by the seizing authority as provided for a judgment of forfeiture.

#### **297G.22 JUDICIAL REVIEW.**

In lieu of an administrative appeal under this chapter, a person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under this chapter may, within 60 days from the date of the notice of the order, appeal to the Tax Court in the manner provided under section 271.06.

#### **297H.01 SOLID WASTE MANAGEMENT TAX DEFINITIONS.**

Subdivision 1. **Scope.** When used in this chapter, the following terms have the meanings given to them in this section. For terms not defined in this section, the definitions contained in chapter 115A are incorporated into this chapter.

Subd. 2. **Commercial generator.** "Commercial generator" means any of the following:

- (1) an owner or operator of a business, including a home-operated business, industry, church, nursing home, nonprofit organization, school, or any other commercial or institutional enterprise that generates mixed municipal solid waste or nonmixed municipal solid waste; or

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(2) any other generator of taxable waste that is not a residential generator defined in subdivision 8. A commercial generator does not include a self-hauler.

Subd. 3. **Cubic yard.** "Cubic yard" means a cubic yard of nonmixed municipal solid waste that is not compacted.

Subd. 4. **Market price.** "Market price" means the lowest price available in the area, assuming transactions between separate parties that are willing buyers and willing sellers in a market.

Subd. 5. **Mixed municipal solid waste.** "Mixed municipal solid waste" means mixed municipal solid waste as defined in section 115A.03, subdivision 21.

Subd. 6. **Nonmixed municipal solid waste.** "Nonmixed municipal solid waste" means:

- (1) infectious waste as defined in section 116.76, subdivision 12;
- (2) pathological waste as defined in section 116.76, subdivision 14;
- (3) industrial waste as defined in section 115A.03, subdivision 13a; and
- (4) construction debris as defined in section 115A.03, subdivision 7.

Subd. 7. **Periodic waste collection.** "Periodic waste collection" means each time a waste container is emptied by the person that collects the nonmixed municipal solid waste at the point that the waste has been aggregated for collection by the generator.

Subd. 8. **Residential generator.** "Residential generator" means any of the following:

- (1) a detached single family residence that generates mixed municipal solid waste or nonmixed municipal solid waste;
- (2) a person residing in a building or site containing multiple residences that generates mixed municipal solid waste, including apartment buildings, common interest communities, or manufactured home parks, where each residence is separately billed by the waste service provider;
- (3) an owner of a building or site containing multiple residences or an association representing residences that generate mixed municipal solid waste or nonmixed municipal solid waste, including apartment buildings, condominiums, manufactured home parks, or townhomes where no residence is separately billed for such service by the waste management service provider and the owner or association is billed directly for the waste management services. A residential generator does not include a self-hauler.

Subd. 9. **Sales price.** "Sales price" means total consideration valued in money for waste management services, excluding separately stated charges for exemptions listed under section 297H.06.

Subd. 10. **Self-hauler.** "Self-hauler" means a person who transports mixed municipal solid waste or nonmixed municipal solid waste generated by that person or another person without compensation.

Subd. 11. **Waste management service provider.** "Waste management service provider" means the person who directly bills the generator or self-hauler for waste management services, and includes, but is not limited to, waste haulers, waste management facilities, utility services, and political subdivisions, to the extent they directly bill for waste management services.

Subd. 12. **Waste management services.** "Waste management services" means waste collection, transportation, processing, and disposal.

**297H.02 RESIDENTIAL GENERATORS.**

Subdivision 1. **Imposition.** (a) A tax is imposed upon the sales price of mixed municipal solid waste management services received by a residential generator.

(b) The tax is imposed upon the difference between the market price and the tip fee at a processing or disposal facility where the tip fee is less than the market price and the political subdivision subsidizes the cost of service at the facility. The political subdivision is liable for the tax.

(c) The tax is imposed upon the market price of waste management services where a political subdivision directly bills on a property tax statement for organized collection of mixed municipal solid waste. The political subdivision is liable for the tax.

(d) The political subdivision shall, by resolution, identify the market price. The political subdivision shall submit the market price to the commissioner of the Pollution Control Agency for review by October 1 of the year prior to the calendar year in which the market price will be in effect. The prices that the state pays for waste management services in that jurisdiction or the county where the jurisdiction is located must be a guideline in determining the market price. The commissioner of the Pollution Control Agency shall review the market price and shall inform the political subdivisions of any necessary changes to market price by November 15 of that year. The market price shall be effective as of January 1 of the next calendar year following review. The commissioner of the Pollution Control Agency may consider adjustment to the market price if a

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political subdivision submits a resolution for adjustment by May 1 of any year. The effective date of the adjustment shall be July 1.

If the commissioner of revenue believes a market price declared by resolution is not accurate, the commissioner may request that the Pollution Control Agency advise the political subdivision to identify by resolution an updated market price and submit the updated market price to the Pollution Control Agency for review.

Subd. 2. **Rates.** The rate of tax under this section is 9.75 percent.

Subd. 3. **Sales price of bags, stickers, or other indicia.** When the sales price of a bag, sticker, or other indicia includes mixed municipal solid waste management services for residential generators, the tax on the bag, sticker, and other indicia sold by vendors on behalf of a political subdivision or waste hauler shall be collected when the bag, sticker, or other indicia are sold to the vendor by the political subdivision or waste hauler, and shall be taxed at the rate imposed under subdivision 2. The solid waste management service and the solid waste management tax shall be included in the sales price of the bag, sticker, or other indicia.

#### **297H.03 MIXED MUNICIPAL SOLID WASTE COMMERCIAL GENERATORS.**

Subdivision 1. **Imposition.** (a) A tax is imposed upon the sales price of mixed municipal solid waste management services received by a commercial generator.

(b) The tax is imposed upon the difference between the market price and the tip fee at a processing or disposal facility where the tip fee is less than the market price and the political subdivision subsidizes the cost of service at the facility. The political subdivision is liable for the tax.

(c) The tax is imposed upon the market price of waste management services where a political subdivision directly bills on a property tax statement for organized collection of mixed municipal solid waste. The political subdivision is liable for the tax.

(d) Section 297H.02, subdivision 1, paragraph (d), applies to paragraphs (b) and (c) of this subdivision.

Subd. 2. **Rate.** The rate of the tax under this section is 17 percent.

Subd. 3. **Sales price of bags, stickers, or other indicia.** When the sales price of a bag, sticker, or other indicia includes mixed municipal solid waste management services for commercial generators, the tax on the bag, sticker, and other indicia sold by vendors on behalf of a political subdivision or waste hauler shall be collected when the bag, sticker, or other indicia are sold to the vendor by the political subdivision or waste hauler, and shall be taxed at the rate imposed under subdivision 2. The solid waste management service and the solid waste management tax shall be included in the sales price of the bag, sticker, or other indicia.

#### **297H.04 NONMIXED MUNICIPAL SOLID WASTE.**

Subdivision 1. **Imposition.** A tax is imposed upon the volume of nonmixed municipal solid waste that is managed.

Subd. 2. **Rate.** (a) Commercial generators that generate nonmixed municipal solid waste shall pay a solid waste management tax of 60 cents per noncompacted cubic yard of periodic waste collection capacity purchased by the generator, based on the size of the container for the nonmixed municipal solid waste, the actual volume, or the weight-to-volume conversion schedule in paragraph (c). However, the tax must be calculated by the waste management service provider using the same method for calculating the waste management service fee so that both are calculated according to container capacity, actual volume, or weight.

(b) Notwithstanding section 297H.02, a residential generator that generates nonmixed municipal solid waste shall pay a solid waste management tax in the same manner as provided in paragraph (a).

(c) The weight-to-volume conversion schedule for:

(1) construction debris as defined in section 115A.03, subdivision 7, is one ton equals 3.33 cubic yards, or \$2 per ton;

(2) industrial waste as defined in section 115A.03, subdivision 13a, is equal to 60 cents per cubic yard. The commissioner of revenue after consultation with the commissioner of the Pollution Control Agency, shall determine, and may publish by notice, a conversion schedule for various industrial wastes; and

(3) infectious waste as defined in section 116.76, subdivision 12, and pathological waste as defined in section 116.76, subdivision 14, is 150 pounds equals one cubic yard, or 60 cents per 150 pounds.

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Subd. 3. **Incineration with mixed waste; rate.** Nonmixed municipal solid waste that is separately collected and processed, but must be incinerated with mixed municipal solid waste in accordance with an industrial solid waste management plan approved by the Pollution Control Agency, shall be taxed at the rate for nonmixed municipal solid waste.

Subd. 4. **Disposal with mixed waste; rate.** Nonmixed municipal solid waste that is separately collected or processed, but is disposed of within the permitted boundaries of a land disposal facility that is also actively accepting and disposing of mixed municipal solid waste, shall be taxed at the rate for mixed municipal solid waste, unless the facility owner and operator can demonstrate a physical separation between the mixed municipal solid waste disposal area and nonmixed municipal solid waste disposal area, such that any air or liquid emissions being collected from the disposal areas are collected separately.

### **297H.05 SELF-HAULERS.**

(a) A self-hauler of mixed municipal solid waste shall pay the tax to the operator of the waste management facility to which the waste is delivered at the rate imposed under section 297H.03, based on the sales price of the waste management services.

(b) A self-hauler of nonmixed municipal solid waste shall pay the tax to the operator of the waste management facility to which the waste is delivered at the rate imposed under section 297H.04.

(c) The tax imposed on the self-hauler of nonmixed municipal solid waste may be based either on the capacity of the container, the actual volume, or the weight-to-volume conversion schedule in paragraph (d). However, the tax must be calculated by the operator using the same method for calculating the tipping fee so that both are calculated according to container capacity, actual volume, or weight.

(d) The weight-to-volume conversion schedule for:

(1) construction debris as defined in section 115A.03, subdivision 7, is one ton equals 3.33 cubic yards, or \$2 per ton;

(2) industrial waste as defined in section 115A.03, subdivision 13a, is equal to 60 cents per cubic yard. The commissioner of revenue, after consultation with the commissioner of the Pollution Control Agency, shall determine, and may publish by notice, a conversion schedule for various industrial wastes; and

(3) infectious waste as defined in section 116.76, subdivision 12, and pathological waste as defined in section 116.76, subdivision 14, is 150 pounds equals one cubic yard, or 60 cents per 150 pounds.

(e) For mixed municipal solid waste the tax is imposed upon the difference between the market price and the tip fee at a processing or disposal facility if the tip fee is less than the market price and the political subdivision subsidizes the cost of service at the facility. The political subdivision is liable for the tax.

### **297H.06 EXEMPTIONS.**

Subdivision 1. **Certain surcharges or fees.** The amount of a surcharge, fee, or charge established pursuant to section 115A.919, 115A.921, 115A.923, 400.08, 473.811, or 473.843, or a service charge by a home rule charter or statutory city that owns and operates a solid waste-to-energy resource recovery facility, is exempt from the solid waste management tax. The exemption does not apply to the tax imposed on market price under section 297H.02, subdivision 1, paragraphs (b) and (c), or section 297H.03, subdivision 1, paragraphs (b) and (c).

Subd. 2. **Materials.** The tax is not imposed upon charges to generators of mixed municipal solid waste or upon the volume of nonmixed municipal solid waste for waste management services to manage the following materials:

(1) mixed municipal solid waste and nonmixed municipal solid waste generated outside of Minnesota;

(2) recyclable materials that are separated for recycling by the generator, collected separately from other waste, and recycled, to the extent the price of the service for handling recyclable material is separately itemized;

(3) recyclable nonmixed municipal solid waste that is separated for recycling by the generator, collected separately from other waste, delivered to a waste facility for the purpose of recycling, and recycled;

(4) industrial waste, when it is transported to a facility owned and operated by the same person that generated it;

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(5) mixed municipal solid waste from a recycling facility that separates or processes recyclable materials and reduces the volume of the waste by at least 85 percent, provided that the exempted waste is managed separately from other waste;

(6) recyclable materials that are separated from mixed municipal solid waste by the generator, collected and delivered to a waste facility that recycles at least 85 percent of its waste, and are collected with mixed municipal solid waste that is segregated in leakproof bags, provided that the mixed municipal solid waste does not exceed five percent of the total weight of the materials delivered to the facility and is ultimately delivered to a waste facility identified as a preferred waste management facility in county solid waste plans under section 115A.46;

(7) source-separated compostable waste, if the waste is delivered to a facility exempted as described in this clause. To initially qualify for an exemption, a facility must apply for an exemption in its application for a new or amended solid waste permit to the Pollution Control Agency. The first time a facility applies to the agency it must certify in its application that it will comply with the criteria in items (i) to (v) and the commissioner of the agency shall so certify to the commissioner of revenue who must grant the exemption. The facility must annually apply to the agency for certification to renew its exemption for the following year. The application must be filed according to the procedures of, and contain the information required by, the agency. The commissioner of revenue shall grant the exemption if the commissioner of the Pollution Control Agency finds and certifies to the commissioner of revenue that based on an evaluation of the composition of incoming waste and residuals and the quality and use of the product:

- (i) generators separate materials at the source;
  - (ii) the separation is performed in a manner appropriate to the technology specific to the facility that:
    - (A) maximizes the quality of the product;
    - (B) minimizes the toxicity and quantity of residuals; and
    - (C) provides an opportunity for significant improvement in the environmental efficiency of the operation;
  - (iii) the operator of the facility educates generators, in coordination with each county using the facility, about separating the waste to maximize the quality of the waste stream for technology specific to the facility;
  - (iv) process residuals do not exceed 15 percent of the weight of the total material delivered to the facility; and
  - (v) the final product is accepted for use;
- (8) waste and waste by-products for which the tax has been paid; and
- (9) daily cover for landfills that has been approved in writing by the Minnesota Pollution Control Agency.

Subd. 3. **Construction debris in a disaster area.** The tax is not imposed on construction debris generated from repair and demolition activities caused by a disaster occurring in a presidentially declared disaster area, provided that the construction debris is disposed of in a waste management facility designated by the commissioner of the Pollution Control Agency. To be exempt, the debris must be disposed of within 18 months following the presidential declaration.

#### **297H.07 BILLING.**

The amount of the tax imposed under this chapter shall be itemized separately on the generator's bill, and shall be designated as the "solid waste management tax."

#### **297H.08 PAYMENT; REPORTING.**

(a) The waste management service provider, or a political subdivision specified in section 297H.02, subdivision 1, and section 297H.03, subdivision 1, shall report the tax on a return prescribed by the commissioner of revenue, and shall remit the tax with the return. The return and the tax must be filed using the filing cycle and due dates provided for taxes imposed under chapter 297A.

(b) The waste hauler or political subdivision that sells bags, stickers, or other indicia to vendors must report and remit the tax imposed by section 297H.02, subdivision 3, and section 297H.03, subdivision 3, on a return prescribed by the commissioner of revenue, and shall remit the tax with the return. The return and the tax must be filed using the filing cycle provided for taxes imposed under chapter 297A.

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(c) Any partial payments received by waste management service providers for waste management services shall be prorated between the tax imposed under section 297H.02, 297H.03, or 297H.04 and the service.

#### **297H.09 BAD DEBTS.**

The remitter of the solid waste management tax may offset against the tax payable, with respect to any reporting period, the amount of tax imposed by this chapter previously remitted to the commissioner of revenue which qualified as a bad debt under section 166(a) of the Internal Revenue Code as defined in section 289A.02, subdivision 7, during such reporting period, but only in proportion to the portion of such debt which became uncollectible. This section applies only to accrual basis remitters that remit tax before it is collected and to the extent they are unable to collect the tax.

#### **297H.10 ADMINISTRATION; ENFORCEMENT; PENALTY.**

Subdivision 1. **Administration and enforcement.** The audit, assessment, appeal, collection, refund, penalty, interest, enforcement, and administrative provisions of chapters 270C and 289A that are applicable to taxes imposed by chapter 297A apply to this chapter.

#### **297H.11 REQUIREMENTS AND POTENTIAL LIABILITY OF WASTE MANAGEMENT SERVICE PROVIDERS.**

Subdivision 1. **Requirements.** Waste management service providers are required to:

- (1) separately and accurately state the amount of the tax in the appropriate statement of charges for waste management services, or other statement if there are no charges for waste management services, and in any action to enforce payment on delinquent accounts;
- (2) accurately account for and remit tax received; and
- (3) work with the commissioner of revenue to ensure that generators pay the tax.

Subd. 2. **Liability.** A waste management service provider is liable for an amount equal to the solid waste management tax that was either:

- (1) received by the waste management service provider but not timely remitted to the commissioner of revenue; or
- (2) not received by the waste management service provider and the waste management service provider failed to separately and accurately state the amount of the tax in the appropriate statement of charges for waste management services and in any action to enforce payment on delinquent accounts.

Subd. 3. **Recovery.** A person who is liable under subdivision 2 is not prohibited from recovering from the generator or self-hauler the amount of the liability paid to the commissioner of revenue that is equal to the solid waste management tax owed by the generator or self-hauler.

#### **297H.115 USE TAX.**

Subdivision 1. **Imposition; liability of generators and self-haulers.** (a) A use tax is imposed on the sales price of mixed municipal solid waste management services received by a residential generator at the rate imposed under section 297H.02, unless the tax imposed under section 297H.02 was paid. The residential generator is liable.

(b) A use tax is imposed on the sales price of mixed municipal solid waste management services received by a commercial generator at the rate imposed under section 297H.03, unless the tax imposed under section 297H.03 was paid. The commercial generator is liable.

(c) A use tax is imposed on the volume of nonmixed municipal solid waste that is managed at the rate imposed under section 297H.04, unless the tax imposed under section 297H.04 was paid. The generator is liable.

(d) A use tax is imposed on the sales price of mixed municipal solid waste management services received by a self-hauler at the rate imposed under section 297H.05, paragraph (a), unless the tax imposed under section 297H.05, paragraph (a), was paid. The self-hauler is liable.

(e) A use tax is imposed on the volume of nonmixed municipal solid waste managed at the rate imposed under section 297H.05, paragraph (b), unless the tax imposed under section 297H.05, paragraph (b), was paid. The self-hauler is liable.

Subd. 2. **Payment; reporting.** A generator or self-hauler that is liable under subdivision 1 shall report the use tax on a return prescribed by the commissioner of revenue, and shall remit the tax with the return. The return and the tax must be filed using the filing cycle and due dates provided for taxes imposed under chapter 297A.

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Subd. 3. **Commissioner assessment.** (a) The commissioner of revenue may not assess the generator or self-hauler a use tax on a transaction for which the waste management service provider has paid the solid waste management tax, except as provided in paragraph (b).

(b) If the waste management service provider who is an accrual basis taxpayer remits a payment and thereafter offsets the amount as a bad debt under section 297H.09, the commissioner of revenue may assess the generator or self-hauler a use tax for the offset amount.

#### **297H.12 INFORMATION REGARDING THE SOLID WASTE MANAGEMENT TAX.**

The commissioner of the Pollution Control Agency, after consulting with the commissioner of revenue and waste management service providers, shall develop information regarding the solid waste management tax for distribution to waste generators in the state. The information shall include facts about the substitution of the solid waste management tax for the sales tax on solid waste services and the solid waste generator assessment and the purposes for which revenue from the tax will be spent.

#### **297H.13 DEPOSIT OF REVENUES; USE OF PROCEEDS; REPORT ON RECEIPTS.**

Subdivision 1. **Deposit of revenues.** The revenues derived from the taxes imposed on waste management services under this chapter shall be deposited by the commissioner of revenue in the state treasury.

Subd. 2. **Allocation of revenues.** (a) \$33,760,000, or 70 percent, whichever is greater, of the amounts remitted under this chapter must be credited to the environmental fund established in section 16A.531, subdivision 1.

(b) The remainder must be deposited into the general fund.

Subd. 5. **Report on receipts.** The commissioner of revenue shall report to the chairs of the house of representatives and senate Environment and Natural Resources Committees; the house of representatives Environment and Natural Resources Finance Division; the senate Environment and Agriculture Budget Division; the house of representatives Tax Committee and the senate Taxes and Tax Laws Committee; and the commissioner of the Pollution Control Agency on the total tax revenues received from the taxes imposed under this chapter. The reports shall be made as follows:

(1) a report by August 31 of each year based on amounts received by the commissioner of revenue from January 1 through June 30 of that year; and

(2) a report by February 28 of each year based on amounts received by the commissioner of revenue from July 1 through December 31 of the preceding year.

#### **297I.01 DEFINITIONS.**

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, for the purposes of this chapter, the following terms have the meanings given them.

Subd. 1a. **Affiliated group.** "Affiliated group" means a group that includes the insured and any entity, or group of entities, that controls, is controlled by, or is under common control with the insured. An entity has control over another entity when: (1) the entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or (2) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

Subd. 2. **Association or associations.** "Association" or "associations" has the meaning given in section 60A.02, subdivision 1a.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of revenue of the state of Minnesota.

Subd. 4. **Community integrated service network.** "Community integrated service network" has the meaning given in section 62N.02, subdivision 4a.

Subd. 5. **Company or insurance company.** "Company" or "insurance company" has the meaning given in section 60A.02, subdivision 4.

Subd. 6. **Department of Revenue.** "Department of Revenue" means the Minnesota Department of Revenue or commissioner of revenue.

Subd. 6a. **Direct business.** (a) "Direct business" means all insurance provided by an insurance company or its agents, and specifically includes stop-loss insurance purchased in



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connection with a self-insurance plan for employee health benefits or for other purposes, but excludes:

(1) reinsurance in which an insurance company assumes the liability of another insurance company; and

(2) self-insurance.

(b) For purposes of this subdivision, an insurance company includes a nonprofit health service corporation, health maintenance organization, and community integrated service network.

Subd. 7. **Domestic.** "Domestic" has the meaning given in section 60A.02, subdivision 5.

Subd. 8. **Foreign.** "Foreign" has the meaning given in section 60A.02, subdivision 6.

Subd. 9. **Gross premiums.** "Gross premiums" means total premiums paid by policyholders and applicants of policies, whether received in the form of money or other valuable consideration, on property, persons, lives, interests and other risks located, resident, or to be performed in this state, but excluding consideration and premiums for reinsurance assumed from other insurance companies.

(a) "Gross premiums" includes the total consideration paid to bail bond agents for bail bonds.

(b) For title insurers, "gross premiums" means the charge for title insurance made by a title insurer or its agents according to the insurer's rate filing approved by the commissioner of commerce without a deduction for commissions paid to or retained by the agent. Gross premiums of a title insurer does not include any other charge or fee for abstracting, searching, or examining the title, or escrow, closing, or other related services.

(c) "Gross premiums" includes any workers' compensation special compensation fund premium surcharge pursuant to section 176.129.

(d) "Gross premiums" for nonadmitted insurance includes any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, fees, and any other compensation given in consideration for a contract of insurance. Gross premiums does not include the stamping fee, as provided under section 60A.2085, subdivision 7, nor the operating assessment, as provided under section 60A.208, subdivision 8.

Subd. 10. **Health maintenance organization.** "Health maintenance organization" has the meaning given in section 62D.02, subdivision 4.

Subd. 10a. **Home state.** "Home state" means the state in which an insured maintains its principal place of business, or in the case of an individual, the individual's principal residence; or if 100 percent of the insured risk is located out of the state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term home state means the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract.

Subd. 10b. **Independently procured insurance.** "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

Subd. 10c. **Nonadmitted insurance.** "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer.

Subd. 10d. **Nonadmitted insurance premium tax.** "Nonadmitted insurance premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed directly or indirectly by a government entity.

Subd. 10e. **Nonadmitted insurer.** "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in Minnesota, but does not include a risk retention group as the term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986, United States Code, title 15, section 3901(a)(4).

Subd. 11. **Nonprofit health service plan corporation.** "Nonprofit health service plan corporation" has the meaning given in section 62C.02, subdivision 6.

Subd. 12. **Insurance.** "Insurance" means the same as that term is defined in section 60A.02, subdivision 3.

Subd. 13. **Insurance agent or insurance agency.** "Insurance agent" or "insurance agency" has the meaning given in section 60A.02, subdivision 7.

Subd. 13a. **Reinsurance.** "Reinsurance" is insurance whereby an insurance company, for a consideration, agrees to indemnify another insurance company as defined under section 297I.01, subdivisions 5 and 6a, paragraph (b), to the extent taxable under section 297I.05, against all or part of the loss which the latter may sustain under the policy or policies which it has issued.

Subd. 14. **Return premiums.** "Return premiums" means any dividend or any unused or unabsorbed portion of premium deposit or assessment that is applied toward the payment of any premium, premium deposit, or assessment due from the policyholder or member upon a

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continuance or renewal of the insurance on account of which the dividend was earned or premium deposit or assessment paid. Return premiums also includes any portion of premium returned by the company upon cancellation or termination of a policy or membership, except surrender values paid upon the cancellation and surrender of policies or certificates of life insurance.

Subd. 15. **State.** "State" has the meaning given in section 60A.02, subdivision 18.

Subd. 15a. **Surplus lines broker.** "Surplus lines broker" means an individual, firm, or corporation which is licensed in a state to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a state with nonadmitted insurers.

Subd. 16. **Taxpayer.** "Taxpayer" means any insurance company, association, surplus lines broker, or insured or any other person or entity required to pay any amount due under this chapter.

**297I.05 TAX IMPOSED.**

Subdivision 1. **Domestic and foreign companies.** Except as otherwise provided in this section, a tax is imposed on every domestic and foreign insurance company. The rate of tax is equal to two percent of all gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 2. **Town and farmers' mutual insurance.** A tax is imposed on town and farmers' mutual insurance companies. The rate of tax is equal to one percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 3. **Mutual property and casualty companies with assets of \$5,000,000 or less at the end of the calendar year.** A tax is imposed on mutual property and casualty companies with assets of \$5,000,000 or less at the end of the calendar year. The rate of tax is equal to one percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 4. **Mutual property and casualty companies with total assets less than \$1,600,000,000 on December 31, 1989.** A tax is imposed on:

(1) mutual insurance companies that sell both property and casualty insurance that had total assets greater than \$5,000,000 at the end of the calendar year but that had total assets less than \$1,600,000,000 on December 31, 1989; and

(2) a mutual insurance company created pursuant to Laws 1983, chapter 287, article 2, that sells only casualty insurance.

The rate of tax is equal to 1.26 percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 5. **Health maintenance organizations, nonprofit health service plan corporations, and community integrated service networks.** (a) A tax is imposed on health maintenance organizations, community integrated service networks, and nonprofit health care service plan corporations. The rate of tax is equal to one percent of gross premiums less return premiums on all direct business received by the organization, network, or corporation or its agents in Minnesota, in cash or otherwise, in the calendar year.

(b) The commissioner shall deposit all revenues, including penalties and interest, collected under this chapter from health maintenance organizations, community integrated service networks, and nonprofit health service plan corporations in the health care access fund. Refunds of overpayments of tax imposed by this subdivision must be paid from the health care access fund. There is annually appropriated from the health care access fund to the commissioner the amount necessary to make any refunds of the tax imposed under this subdivision.

Subd. 7. **Nonadmitted insurance premium tax.** (a) A tax is imposed on surplus lines brokers. The rate of tax is equal to three percent of the gross premiums less return premiums paid by an insured whose home state is Minnesota.

(b) A tax is imposed on a person, firm, corporation, or purchasing group as defined in section 60E.02, or any member of a purchasing group, that procures insurance directly from a nonadmitted insurer. The rate of tax is equal to two percent of the gross premiums less return premiums paid by an insured whose home state is Minnesota.

(c) No state other than the home state of an insured may require any premium tax payment for nonadmitted insurance. When Minnesota is the home state of the insured, as provided under section 297I.01, 100 percent of the gross premiums are taxable in Minnesota with no allocation of the tax to other states.

Subd. 11. **Retaliatory provisions.** (a) If any other state or country imposes any taxes, fines, deposits, penalties, licenses, or fees upon any insurance companies of this state and their agents doing business in another state or country that are in addition to or in excess of those imposed

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by the laws of this state upon foreign insurance companies and their agents doing business in this state, the same taxes, fines, deposits, penalties, licenses, and fees are imposed upon every similar insurance company of that state or country and their agents doing or applying to do business in this state.

(b) If any conditions precedent to the right to do business in any other state or country are imposed by the laws of that state or country, beyond those imposed upon foreign companies by the laws of this state, the same conditions precedent are imposed upon every similar insurance company of that state or country and their agents doing or applying to do business in that state.

(c) For purposes of this subdivision, "taxes, fines, deposits, penalties, licenses, or fees" means an amount of money that is deposited in the general revenue fund of the state or other similar fund in another state or country and is not dedicated to a special purpose or use or money deposited in the general revenue fund of the state or other similar fund in another state or country and appropriated to the commissioner of commerce or insurance for the operation of the Department of Commerce or other similar agency with jurisdiction over insurance. Taxes, fines, deposits, penalties, licenses, or fees do not include:

(1) special purpose obligations or assessments imposed in connection with particular kinds of insurance, including but not limited to assessments imposed in connection with residual market mechanisms; or

(2) assessments made by the insurance guaranty association, life and health guarantee association, or similar association.

(d) This subdivision applies to taxes imposed under subdivisions 1; 3; 4; 12, paragraph (a), clauses (1) and (2); and 14.

(e) This subdivision does not apply to insurance companies organized or domiciled in a state or country, the laws of which do not impose retaliatory taxes, fines, deposits, penalties, licenses, or fees or which grant, on a reciprocal basis, exemptions from retaliatory taxes, fines, deposits, penalties, licenses, or fees to insurance companies domiciled in this state.

**Subd. 12. Other entities.** (a) A tax is imposed equal to two percent of:

(1) gross premiums less return premiums written for risks resident or located in Minnesota by a risk retention group;

(2) gross premiums less return premiums received by an attorney in fact acting in accordance with chapter 71A;

(3) gross premiums less return premiums received pursuant to assigned risk policies and contracts of coverage under chapter 79; and

(4) the direct funded premium received by the reinsurance association under section 79.34 from self-insurers approved under section 176.181 and political subdivisions that self-insure.

(b) A tax is imposed on a joint self-insurance plan operating under chapter 60F. The rate of tax is equal to two percent of the total amount of claims paid during the fund year, with no deduction for claims wholly or partially reimbursed through stop-loss insurance.

(c) A tax is imposed on a joint self-insurance plan operating under chapter 62H. The rate of tax is equal to two percent of the total amount of claims paid during the fund's fiscal year, with no deduction for claims wholly or partially reimbursed through stop-loss insurance.

(d) A tax is imposed equal to the tax imposed under section 297I.05, subdivision 5, on the gross premiums less return premiums on all coverages received by an accountable provider network or agents of an accountable provider network in Minnesota, in cash or otherwise, during the year.

**Subd. 13. Funds deposited into general fund.** Unless otherwise specified in this chapter, all amounts collected by the commissioner under this chapter must be deposited in the general fund.

**Subd. 14. Life insurance.** A tax is imposed on life insurance. The rate of tax equals 1.5 percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota for life insurance, in cash or otherwise, during the year.

### **297I.06 SURCHARGES ON FIRE SAFETY PREMIUMS.**

**Subdivision 1. Insurance policies surcharge.** (a) Except as otherwise provided in subdivision 2, each licensed insurer engaged in writing policies of homeowner's insurance authorized in section 60A.06, subdivision 1, clause (1)(c), or commercial fire policies or commercial nonliability policies shall collect a surcharge as provided in this paragraph. Through June 30, 2013, the surcharge is equal to 0.65 percent of the gross premiums and assessments, less return premiums, on direct business received by the company, or by its agents for it, for homeowner's insurance policies, commercial fire policies, and commercial nonliability insurance policies in this state. Beginning July 1, 2013, the surcharge is 0.5 percent.

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(b) The surcharge amount collected under paragraph (a) or subdivision 2, paragraph (b), may not be considered premium for any other purpose. The surcharge amount under paragraph (a) must be separately stated on either a billing or policy declaration or document containing similar information sent to an insured.

(c) Amounts collected by the commissioner under this section must be deposited in the fire safety account established pursuant to subdivision 3.

Subd. 2. **Exemptions.** (a) This section does not apply to a township mutual fire insurance company in Minnesota organized under chapter 67A.

(b) An insurer described in section 297I.05, subdivisions 3 and 4, authorized to transact business in Minnesota shall elect to remit to the Department of Revenue for deposit in the fire safety account either (1) the surcharge amount imposed under subdivision 1 on all premiums subject to that surcharge, or (2) a surcharge of one-half of one percent on the gross fire premiums and assessments, less return premiums, on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

(c) The election must be made by December 31 of each year for insurance policies written or renewed in the succeeding calendar year. An insurer who elects to remit the one-half of one percent surcharge on gross fire premiums and assessments must not charge the insured the surcharge imposed under subdivision 1.

(d) For purposes of this subdivision, "gross fire premiums and assessments" includes premiums on policies covering fire risks only on automobiles, whether written or under floater form or otherwise.

Subd. 3. **Fire safety account, annual transfers, allocation.** A special account, to be known as the fire safety account, is created in the state treasury. The account consists of the proceeds under subdivisions 1 and 2. \$4,227,000 in fiscal year 2012, \$4,228,000 in fiscal year 2013, and \$2,368,000 in fiscal years 2014 and 2015 are transferred from the fire safety account in the special revenue fund to the general fund to offset the loss of revenue caused by the repeal of the one-half of one percent tax on fire insurance premiums.

#### **297I.10 SURCHARGE ON PREMIUMS TO RESTORE DEFICIENCY IN SPECIAL FUND.**

Subdivision 1. **Cities of the first class.** (a) The commissioner shall order and direct a surcharge to be collected of two percent of the fire, lightning, and sprinkler leakage gross premiums, less return premiums, on all direct business received by any licensed foreign or domestic fire insurance company on property in a city of the first class, or by its agents for it, in cash or otherwise.

(b) By July 31 and December 31 of each year, the commissioner of management and budget shall pay to each city of the first class a warrant for an amount equal to the total amount of the surcharge on the premiums collected within that city since the previous payment.

(c) The treasurer of the city shall place the money received under this subdivision in a special account or fund to defray all or a portion of the employer contribution requirement of public employees police and fire plan coverage for city firefighters.

Subd. 3. **Appropriation.** The amount necessary to make the payments required under this section is appropriated to the commissioner of management and budget from the general fund.

Subd. 4. **Collection and administration.** The commissioner shall administer the surcharge imposed by this section in the same manner as the taxes imposed by this chapter.

#### **297I.11 AUTOMOBILE THEFT PREVENTION SURCHARGE.**

Subdivision 1. **Surcharge.** Each insurer engaged in the writing of policies of automobile insurance shall collect a surcharge, at the rate of 50 cents per vehicle for every six months of coverage, on each policy of automobile insurance providing comprehensive insurance coverage issued or renewed in this state. The surcharge may not be considered premium for any purpose, including the computation of premium tax or agents' commissions. The amount of the surcharge must be separately stated on either a billing or policy declaration sent to an insured. Insurers shall remit the revenue derived from this surcharge to the commissioner of revenue for purposes of the automobile theft prevention program described in section 65B.84. For purposes of this subdivision, "policy of automobile insurance" has the meaning given it in section 65B.14, covering only the following types of vehicles as defined in section 168.002:

- (1) a passenger automobile;
- (2) a pickup truck;
- (3) a van but not commuter vans as defined in section 168.126; or

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(4) a motorcycle, except that no vehicle with a gross vehicle weight in excess of 10,000 pounds is included within this definition.

Subd. 2. **Automobile theft prevention account.** A special revenue account in the state treasury shall be credited with the proceeds of the surcharge imposed under subdivision 1. Of the revenue in the account, \$1,300,000 each year must be transferred to the general fund. Revenues in excess of \$1,300,000 each year may be used only for the automobile theft prevention program described in section 65B.84.

Subd. 3. **Collection and administration.** The commissioner shall collect and administer the surcharge imposed by this section in the same manner as the taxes imposed by this chapter.

### 297I.15 EXEMPTIONS FROM TAX.

Subdivision 1. **Government payments.** Premiums under the Minnesota comprehensive health insurance plan and all payments, revenues, and reimbursements received from the federal government for Medicare-related coverage as defined in section 62A.3099 are not subject to tax under this chapter.

Subd. 2. **Minnesota employees insurance program.** To the extent that the Minnesota employees insurance program under section 43A.317 operates as a self-insured group, the premiums paid to the program are exempt from the taxes imposed under this chapter, but are subject to a Minnesota Comprehensive Health Association assessment under section 62E.11.

Subd. 3. **Public employees insurance program.** Premiums paid to the public employees insurance program under section 43A.316 are exempt from the taxes imposed under this chapter.

Subd. 4. **Premiums paid to health carriers by state.** A health carrier as defined in section 62A.011 is exempt from the taxes imposed under this chapter on premiums paid to it by the state. Premiums paid by the state under medical assistance, general assistance medical care, and the MinnesotaCare program are not exempt under this subdivision.

Subd. 5. **Minnesota Insurance Guaranty Association.** The Minnesota Insurance Guaranty Association under chapter 60C is exempt from the taxes imposed under this chapter.

Subd. 6. **Minnesota Life and Health Guaranty Association.** The Minnesota Life and Health Guaranty Association under chapter 61B is exempt from the taxes imposed under this chapter.

Subd. 7. **Minnesota Comprehensive Health Association.** The Minnesota Comprehensive Health Association under chapter 62E is exempt from the taxes imposed under this chapter.

Subd. 8. **Writing carrier for the comprehensive health insurance plan.** Premiums received by the writing carrier for the comprehensive health insurance plan established under section 62E.10 in connection with that plan are exempt from the taxes imposed under this chapter.

Subd. 9. **Health Coverage Reinsurance Association.** The Health Coverage Reinsurance Association under chapter 62L is exempt from the taxes imposed under this chapter.

Subd. 10. **Premiums paid to fraternal benefit societies.** Premiums paid to fraternal benefit societies pursuant to chapter 64B are exempt from the taxes imposed under this chapter.

Subd. 11. **Premiums paid to certain foreign insurance companies.** With respect to the state employees group insurance program established under sections 43A.23 to 43A.31, premiums paid for life insurance and accidental death and dismemberment insurance for eligible employees and dependents, including premiums paid by employees or dependents for optional coverage, are exempt from the taxes imposed under this chapter to the extent the premiums are paid to a foreign insurance company domiciled in a state that exempts its state employee group life insurance program from premium taxes.

Subd. 12. **Federal Employees Health Benefits Program.** Premiums received under the Federal Employees Health Benefits Act, United States Code, title 5, section 8909(f), as amended by the Omnibus Reconciliation Act of 1990, are exempt from the taxes and surcharges imposed under this chapter.

### 297I.20 OFFSETS AGAINST PREMIUM TAXES.

Subdivision 1. **Guaranty association assessment offsets.** (a) An insurance company may offset against its premium tax liability to this state any amount paid for assessments made for insolvencies which occur after July 31, 1994, under sections 60C.01 to 60C.22; and any amount paid for assessments made after July 31, 1994, under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or under sections 61B.18 to 61B.32 as follows:

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(1) 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.

(2) The amount of offset initially determined for each taxable year is the sum of the amounts determined under clause (1) for that taxable year.

(b)(1) Each year the commissioner 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."

(2) If total guaranty association assessments levied over the preceding five years exceed the preceding year insurance tax revenues, insurance companies must be allowed only a proportionate part of the premium tax offset calculated under paragraph (a) for the current calendar year.

(3) The proportionate part of the premium tax offset allowed in the current calendar year is determined by multiplying the amount calculated under paragraph (a) by a fraction. The numerator of the fraction equals the preceding year insurance tax revenues, and its denominator equals total guaranty association assessments levied over the preceding five-year period.

(4) The proportionate part of the premium tax offset that is not allowed must be carried forward to subsequent tax years and added to the amount of premium tax offset calculated under paragraph (a) prior to application of the limitation imposed by this paragraph.

(5) Any amount carried forward from prior years must be allowed before allowance of the offset for the current year calculated under paragraph (a).

(6) The premium tax offset limitation must be calculated separately for (i) insurance companies subject to assessment under sections 60C.01 to 60C.22, and (ii) insurance companies subject to assessment under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or 61B.18 to 61B.32.

(7) When the premium tax offset is limited by this provision, the commissioner shall notify affected insurance companies on a timely basis for purposes of completing premium and corporate franchise tax returns.

(8) The guaranty associations created under sections 60C.01 to 60C.22, Minnesota Statutes 1992, sections 61B.01 to 61B.16, and 61B.18 to 61B.32, shall provide the commissioner with the necessary information on guaranty association assessments.

(c)(1) If the offset determined by the application of paragraphs (a) and (b) exceeds the insurance company's premium tax liability under this section prior to allowance of the credit for premium taxes, then the insurance company may carry forward the excess, referred to in this subdivision as the "carryforward credit" to subsequent taxable years.

(2) The carryforward credit is allowed as an offset against premium tax liability for the first succeeding year to the extent that the premium tax liability for that year exceeds the amount of the allowable offset for the year determined under paragraphs (a) and (b).

(3) The carryforward credit must be reduced, but not below zero, by the amount of the carryforward credit allowed as an offset against the premium tax under this paragraph. 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 premium tax under this chapter if applicable for that taxable year.

(d) When an insurer has offset against taxes its payment of an assessment of the Minnesota Life and Health Guaranty Association, and the association pays the insurer a refund with respect to the assessment under Minnesota Statutes 1992, section 61B.07, subdivision 6, or 61B.24, subdivision 6, then the refund reduces the insurer's carryforward credit under paragraph (c). If the refund exceeds the amount of the carryforward credit, the excess amount must be repaid to the state by the insurers to the extent of the offset in the manner the commissioner requires.

**Subd. 2. Joint Underwriting Association offset.** An insurance company may offset against its premium tax liability to this state any amount paid for an assessment made pursuant to section 62I.06, subdivision 6. The offset against premium tax liability must be claimed beginning with the taxable year that the assessment is paid. To the extent that the allowable offset exceeds the tax liability, the remaining offset must be carried forward to succeeding taxable years until the entire offset has been credited against the insurance company's liability for premium tax under this chapter.

**Subd. 3. Historic structure rehabilitation credit.** An insurance company may claim a credit against the premiums tax imposed under this chapter equal to the amount of the credit certificate issued to it, or to a person who has assigned the credit to the insurance company, under section 290.0681. If the amount of the credit exceeds the liability for tax under this chapter, the commissioner shall refund the excess to the insurance company. An amount sufficient to pay the

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refunds under this section is appropriated to the commissioner from the general fund. This credit does not affect the calculation of police and fire aid under section 69.021.

### **297I.25 INFORMATION RETURNS.**

Subdivision 1. **Licensed brokers or agents of risk retention groups.** To the extent licensed agents or brokers are utilized in accordance with section 60E.12, they shall report to the commissioner the premiums received for direct business for risks resident or located within this state which the licensees have placed with or on behalf of a risk retention group not chartered in this state.

Subd. 2. **Firetown and police premium reports.** To the extent required by section 69.021, each insurer shall file with the commissioner a Minnesota firetown premium report and Minnesota aid to police premium report.

### **297I.30 DUE DATES FOR FILING RETURNS.**

Subdivision 1. **General rule.** On or before March 1, every taxpayer subject to taxation under section 297I.05, subdivisions 1 to 5; 7, paragraph (b); 12; and 14, shall file an annual return for the preceding calendar year in the form prescribed by the commissioner.

Subd. 2. **Surplus lines brokers.** On or before February 15 and August 15 of each year, every surplus lines broker subject to taxation under section 297I.05, subdivision 7, paragraph (a), shall file a return with the commissioner for the preceding six-month period ending December 31, or June 30, in the form prescribed by the commissioner.

Subd. 7. **Surcharge.** (a) By April 30 of each year, every company required to pay the surcharge under section 297I.10, subdivision 1, shall file a return for the five-month period ending March 31 in the form prescribed by the commissioner.

(b) By June 30 of each year, every company required to pay the surcharge under section 297I.10, subdivision 1, shall file a return for the two-month period ending May 31 in the form prescribed by the commissioner.

(c) By November 30 of each year, every company required to pay the surcharge under section 297I.10, subdivision 1, shall file a return for the five-month period ending October 31 in the form prescribed by the commissioner.

Subd. 8. **Fire insurance surcharge.** On or before May 15, August 15, November 15, and February 15 of each year, every insurer required to pay the surcharge under section 297I.06, subdivisions 1 and 2, shall file a return with the commissioner for the preceding three-month period ending March 31, June 30, September 30, and December 31, in the form prescribed by the commissioner.

Subd. 9. **Extensions for filing returns.** When, in the commissioner's judgment, good cause exists, the commissioner may extend the time for filing returns for not more than six months.

Subd. 10. **Automobile theft prevention surcharge.** On or before May 1, August 1, November 1, and February 1 of each year, every insurer required to pay the surcharge under section 297I.11 shall file a return with the commissioner for the preceding three-month period ending March 31, June 30, September 30, and December 31, in the form prescribed by the commissioner.

### **297I.35 PAYMENT OF TAX.**

Subdivision 1. **General rule.** All taxes and surcharges imposed under this chapter must be paid to the commissioner by the date that the return must be filed under section 297I.30.

Subd. 2. **Electronic payments.** If the aggregate amount of tax and surcharges due under this chapter during a fiscal year ending June 30 is equal to or exceeds \$10,000, or if the taxpayer is required to make payment of any other tax to the commissioner by electronic means, then all tax and surcharge payments in all subsequent calendar years must be paid by electronic means.

### **297I.40 ESTIMATED TAX.**

Subdivision 1. **Requirement to pay.** On or before March 15, June 15, September 15, and December 15 of the current year, every taxpayer subject to tax under section 297I.05, subdivisions 1 to 5, and 12, paragraph (a), clauses (1) to (4), and 14, must pay to the commissioner an installment equal to one-fourth of the insurer's total estimated tax for the current year.

Subd. 2. **Amount of required installment.** The amount of any required installment is one-fourth of the lesser of

(1) 80 percent of the tax imposed for the current year, or

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(2) 100 percent of the tax paid for the previous year.

Subd. 3. **No addition to tax where tax is small.** No addition to tax is imposed if the total tax for the current tax year is \$500 or less.

Subd. 4. **Addition to tax.** (a) In case of any underpayment of installments by an insurer, there is added to, and collected as part of, the tax for the taxable year an amount determined at the rate specified in section 270C.40 upon the amount of underpayment.

(b) The amount of the underpayment is the excess of: (1) the amount of the installment; over (2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) The period of the underpayment runs from the date the installment was required to be paid to the earlier of:

(1) March 1 of the year following the close of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which that portion is paid.

For purposes of this clause, a payment of estimated tax on any installment date is considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment required to be made on that date.

Subd. 5. **Definition of tax.** The term "tax" as used in this section means the tax imposed by section 297I.05, subdivisions 1 to 5, 11, and 12, paragraphs (a), clauses (1) to (4), (b), and (d), and 14, less any offset in section 297I.20.

Subd. 6. **Failure to pay estimated tax.** When an insurer does not make any payments, the period of the underpayment runs from the three installment dates set forth in subdivision 1 to whichever of the periods in subdivision 4, paragraph (c), is the earlier.

Subd. 7. **March estimated payment.** A taxpayer who claims a refund of an overpayment on an original return may elect to have all or any portion of the overpayment applied as a credit to the March 15 estimated tax payment for the year following the year of the return. The credit is considered applied on March 15. Notwithstanding section 297I.80, the amount credited does not bear interest.

**297I.60 CLAIMS FOR REFUND.**

Subdivision 1. **General right to refund.** (a) Subject to the requirements of this section and section 297I.70, if a taxpayer has paid a tax or surcharge in excess of the amount due and files a written claim for refund, the commissioner shall refund or credit the overpayment determined by the commissioner to be erroneously paid.

(b) The claim must specify the name of the taxpayer, the date when and the period for which the tax or surcharge was paid, the kind of tax or surcharge paid, the amount that the taxpayer claims was erroneously paid, the grounds on which a refund is claimed, and other information relative to the payment. The claim must be in the form required by the commissioner. A return or amended return claiming an overpayment constitutes a claim for refund.

(c) The commissioner shall determine the amount of refund, if any, that is due, and notify the taxpayer of the determination as soon as practicable after a claim has been filed. Notice must be mailed to the taxpayer at the address stated upon the return or claim for refund.

(d) If the amount of tax or surcharge paid by the taxpayer exceeds the amount of tax or surcharge imposed on the taxpayer, the amount of excess is considered an overpayment even if in fact there was no liability with respect to which the amount was paid.

(e) When in the course of an examination and within the time for requesting a refund, the commissioner determines that there has been an overpayment of tax or surcharge, the commissioner shall refund or credit the amount of the overpayment to the taxpayer and no return is necessary.

(f) Notwithstanding any law to the contrary, the commissioner is not required to refund or credit any overpayment of less than one dollar.

(g) There is appropriated to the commissioner the amounts necessary to make refunds required by this section. The funds are appropriated from the same fund to which the tax or surcharge being refunded was originally deposited.

Subd. 2. **Remedies.** (a) If the taxpayer is notified that the refund claim is denied in whole or in part, the taxpayer may contest the denial by:

(1) filing an administrative appeal with the commissioner under section 270C.35;

(2) filing an appeal in Tax Court within 60 days of the date of the notice of denial; or

(3) filing an action in the district court to recover the refund.

(b) An action in the district court must be brought within 18 months following the date of the notice of denial. An action for refund of tax or surcharge must be brought in the district court of the district in which lies the taxpayer's principal place of business or in the District Court



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for Ramsey County. If a taxpayer files a claim for refund and the commissioner has not issued a denial of the claim, the taxpayer may bring an action in the district court or the Tax Court at any time after the expiration of six months from the time the claim was filed.

### **297I.65 LIMITATIONS OF TIME FOR ASSESSMENT OF TAX.**

Subdivision 1. **General rule.** Except as otherwise provided, the amount of taxes or surcharges assessable must be assessed within 3-1/2 years after the date the return is filed.

Subd. 2. **Filing date.** For purposes of this section, a return filed before the last day prescribed by law for filing the return is considered to be filed on the last day.

Subd. 3. **False or fraudulent return.** Notwithstanding the limitation under subdivision 1, the tax or surcharge may be assessed at any time if a false or fraudulent return is filed or when a taxpayer fails to file a return.

Subd. 4. **Omission in excess of 25 percent.** Additional taxes or surcharges may be assessed within 6-1/2 years after the due date of the return or the date the return was filed, whichever is later, if the taxpayer omits from a gross premiums tax or surcharge return an amount of tax in excess of 25 percent of the tax or surcharge reported in the return.

### **297I.70 LIMITATION ON CLAIMS FOR REFUND.**

Except as provided in section 297I.75, a claim for refund of an overpayment must be filed within 3-1/2 years from the date prescribed for filing the return, or one year from the date of an order assessing tax or surcharge, or one year from the date of a return filed by the commissioner, upon payment in full of the tax, surcharge, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later. Claims for refund filed after the 3-1/2-year period but within the one-year period are limited to the amount of tax, surcharge, penalties, and interest on the order or return made by the commissioner and to issues determined by the order or return made by the commissioner.

### **297I.75 CONSENT TO EXTEND TIME.**

If before the expiration of the time prescribed in sections 297I.65 and 297I.70 for the assessment of tax or surcharge or the filing of a claim for refund, the commissioner and the taxpayer have consented in writing to the assessment or filing of a claim for refund after that time, the tax or surcharge may be assessed at any time before the expiration of the agreed-upon period and a claim for refund may be paid at any time before the expiration of the agreed-upon period plus six months. The period may be extended by later agreements in writing before the expiration of the period previously agreed upon.

### **297I.80 INTEREST.**

Subdivision 1. **Payable to commissioner.** (a) When interest is required under this section, interest is computed at the rate specified in section 270C.40.

(b) If a tax or surcharge is not paid within the time named by law for payment, the unpaid tax or surcharge bears interest from the date the tax or surcharge should have been paid until the date the tax or surcharge is paid.

(c) Whenever a taxpayer is liable for additional tax or surcharge because of a redetermination by the commissioner or other reason, the additional tax or surcharge bears interest from the time the tax or surcharge should have been paid until the date the tax or surcharge is paid.

(d) A penalty bears interest from the date provided in section 270C.40, subdivision 3, to the date of payment of the penalty.

Subd. 2. **On overpayments.** (a) When interest is required under this section, interest is computed at the rate specified in section 270C.405.

(b) Interest on an overpayment is computed from the date of the payment of the tax or surcharge until the date the refund is made. For purposes of this subdivision, any payment made before the last day prescribed by law to make the payment, including any estimated tax payments, is considered paid on the last day prescribed by law for the payment. A return filed before the due date is considered as filed on the due date.

### **297I.85 CIVIL PENALTIES.**

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Subdivision 1. **Late filing penalty.** If a taxpayer fails to file a return within the time prescribed, a penalty of five percent of the amount of tax or surcharge not timely paid is added to the tax or surcharge.

Subd. 2. **Late payment penalty.** If a taxpayer fails to pay a tax or surcharge within the time specified for payment, a penalty must be added to the amount required to be shown as tax or surcharge. The penalty is five percent of the tax or surcharge not paid on or before the date specified for payment of the tax or surcharge if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax or surcharge remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Subd. 3. **Intent to evade.** If a taxpayer, with intent to evade the tax or surcharge imposed by this chapter, fails to file any return required by this chapter, or with such intent files a false or fraudulent return, a penalty is imposed on the taxpayer. The penalty is equal to 50 percent of the tax or surcharge, less amounts paid by the taxpayer on the basis of the false or fraudulent return and is due for the period to which the return related.

Subd. 4. **Negligence or intentional disregard; penalty.** If any part of an additional assessment is due to negligence or intentional disregard of the statute or a rule but without intent to defraud, there is added to the tax or surcharge a penalty equal to ten percent of the additional assessment.

Subd. 5. **Payment of penalties.** The penalties imposed by this section must be collected and paid in the same manner as taxes.

Subd. 6. **Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

Subd. 7. **Penalty for failure to pay electronically.** In addition to other applicable penalties imposed by this section, if the commissioner notifies the taxpayer that payments are required to be made by electronic means, and the payments are made by some other means, a penalty is imposed. The amount of the penalty is equal to five percent of each payment that should have been paid electronically. After the commissioner's initial notification to the taxpayer that payments are required to be made by electronic means, the commissioner is not required to notify the taxpayer in subsequent periods if the initial notification specified the amount of tax liability at which a taxpayer is required to remit payments by electronic means. The penalty may be abated under the abatement procedures prescribed in section 270C.34, subdivision 2, if the failure to pay electronically is due to reasonable cause.

### **297I.90 CRIMINAL PENALTIES.**

Subdivision 1. **Penalties for knowing failure to file or pay; willful evasion.** (a) If a person is required to file with the commissioner a return, report, or other document, and that person fails to file it when required and does so knowingly, rather than accidentally, inadvertently, or negligently, that person is guilty of a gross misdemeanor.

(b) If a person is required to file with the commissioner a return, report, or other document, and that person willfully attempts in any manner to evade or defeat a tax or surcharge by failing to file it when required, that person is guilty of a felony.

(c) If a person is required to pay or to collect and remit a tax or surcharge, and that person knowingly, rather than accidentally, inadvertently, or negligently, fails to do so when required, that person is guilty of a gross misdemeanor.

(d) If a person is required to pay or to collect and remit a tax or surcharge, and that person willfully attempts to evade or defeat a tax or surcharge by failing to do so when required, that person is guilty of a felony.

Subd. 2. **False or fraudulent returns; penalties.** (a) A person who files with the commissioner a return, report, or other document known by the person to be fraudulent or false concerning a material matter is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud committed is with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.