

Be it enacted by the Legislature of the State of Minnesota :

Section 1. Appropriations by County Boards in certain cases validated.—In all counties in this state having a population of not less than 9,500 and not more than 16,700 inhabitants according to the last preceding federal census, and having an area of not less than 14 nor more than 28 organized townships, whole or fractional, and in which during the year 1937 the County Board in any such county has appropriated not exceeding one thousand (\$1,000) dollars to the Minnesota River Water Control Association for engineering services and incidental expenses in connection with the construction of the "Lac Qui Parle Reservoir Project", such appropriation or payment to such association by any County Board in any such county is hereby legalized and made valid.

Approved July 14, 1937.

CHAPTER 49—H. F. No. 25

An act to amend Laws 1933, Chapter 405, imposing and relating to an income tax, and taxes measured by income, and repealing Laws 1933, Chapter 382.

Be it enacted by the Legislature of the State of Minnesota :

Section 1. Definitions.—That Laws 1933, Chapter 405, Section 1, be and the same is hereby amended by amending subsection (a) thereof and by adding a new subsection, to be known as (dd) to immediately follow subsection (d), said subsection (a) as amended and said new subsection (dd) to read respectively as follows :

"(a) The term 'person' shall include individuals, fiduciaries, estates and trusts, and partnerships not included in the definition of corporations, and may, where the context requires, include corporations as hereinafter defined.

"(dd) The existence of any domestic corporation, as defined in subdivision (c) and (d) hereof, shall be deemed the exercise by it of the privilege of existing as a corporation; the grant to any foreign corporation, as thus defined, of the right to engage in transacting local business within this state shall be deemed the grant to it of the privilege of transacting such business within this state in corporate or organized form; and the transaction of the local business within this state by any foreign corporation, as thus defined, shall be deemed the transaction of such business within this state in corporate or organized form."

Section 2. Income tax imposed.—That Laws 1933, Chapter 405, Section 2, be and the same is hereby amended to read as follows:

"Section 2.

"(a) An annual tax is hereby imposed upon every domestic corporation, except those included within Section 3, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within Section 3, 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.

"(b) The tax imposed by subsection (a) shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and shall be computed in the manner and at the rates hereinafter provided."

Sec. 3. Rate of tax.—That Laws 1933, Chapter 405, Section 3, be and the same is hereby amended so as to read as follows:

"Sec. 3. An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

"(a) Domestic and foreign corporations whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;

"(b) Resident and non-resident individuals, except that no non-resident individual shall be taxed on his income from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year;

"(c) Estates of decedents dying domiciled within or without this state; and

"(d) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations."

Sec. 4. Date of liability.—That Laws 1933, Chapter 405, Section 4, subsection (a), be and the same is hereby amended to read as follows:

"Sec. 4. (a) The liability for the tax imposed by Section 2 shall arise upon the first day of the taxable year upon which a domestic corporation exercises any of the privileges specified in Section 2 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 trans-

acting 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 3 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."

Sec. 5. **Exemption.**—That Laws 1933, Chapter 405, Section 5 be and the same is hereby amended to read as follows:

"Sec. 5. The following corporations and organizations shall be exempted from taxation under this Act:

(a) National and state banks.

(b) Corporations engaged in the business of mining or producing iron ore, but if any such corporation engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in Mason's Minnesota Statutes of 1927, Section 2392-2) shall not be considered as income from the business of mining or producing iron ore within the meaning of this section.

(c) *Farmers' mutual insurance companies organized and existing under the laws of the state and credit unions organized under Chapter 206, Laws 1925.*

(d) Fraternal beneficiary associations wherever organized, and public department relief associations of public employees of this State or of any of its political subdivisions.

(e) Co-operative or mutual rural telephone associations.

(f) Labor, agricultural and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(g) *Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of processing or marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or*

8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who process or market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of non-members in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph.

(h) Corporations operating or conducting public burying grounds, public school houses, public hospitals, academies, colleges, universities, seminaries of learning, churches, houses of worship, and institutions of purely public charity, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(i) Corporations organized for exclusively scientific, literary or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(j) Business leagues and commercial clubs, not organized for profit and no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(k) Clubs organized and operated exclusively for pleasure, recreation or other nonprofitable purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(l) Any corporation all the stock of which is owned by the United States or which may be exempt from a state franchise or income tax by federal law;

(m) The State of Minnesota and all its political or governmental subdivisions, municipalities, agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions."

Sec. 6. **Rate of tax.**—That Laws 1933, Chapter 405, Section 6, be and the same is hereby amended to read as follows:

"Sec. 6. (a) The privilege and income taxes imposed by this act upon corporations shall be computed by applying to their taxable net income in excess of the applicable credits allowed under Section 27, the rate of seven per centum for the calendar years 1937 and 1938 and six per centum thereafter.

"(b) The income taxes imposed by this Act upon individuals, estates and trusts, other than those taxable as corporations, shall be computed by applying to their taxable net income in excess of the applicable credits allowed by Section 27, the following schedule of rates:

- (1) On the first \$1,000, one per centum.
- (2) On the second \$1,000, two per centum.
- (3) On the third \$1,000, three per centum.
- (4) On the fourth \$1,000, four per centum.
- (5) On the fifth \$1,000, five per centum.
- (6) On the sixth and seventh \$1,000, six per centum.
- (7) On the eighth and ninth \$1,000, seven per centum.
- (8) On all over \$9,000 and not over \$12,500, eight per centum.
- (9) On all over \$12,500 and not over \$20,000, nine per centum.
- (10) On the remainder, 10 per centum.

(c) The taxes due under the foregoing computation shall be credited with the following amounts:

1. In the case of an unmarried individual, the estate of a decedent and a trust, \$10.
2. In the case of a married individual, living with husband or wife, and in the case of a head of a household, \$30.
3. In the case of an individual, \$5.00 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent.
4. In the case of a corporation, an amount computed by applying to the tax a fraction equal to one-tenth of the average of the following ratios:

(a) The ratio of the fair value of tangible property, real, personal and mixed, owned and used by the taxpayer in this state in connection with his trade or business during the income year to the total fair value of such property of the taxpayer owned and used by him in connection with the trade or business everywhere. Cash on hand or in bank, shares of stock, notes, bonds, accounts receivable or

other evidences of indebtedness, special privileges, franchises, goodwill or property the income of which is not taxable or is separately allocable, shall not be considered tangible property nor included in the apportionment.

(b) *The ratio of the total wages and salaries paid or incurred during the income year in this state to the total wages and salaries paid or incurred during the income year everywhere.*

5. *In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under this Act is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by Extra Session Laws of 1933, Chapter 53, as amended.*

6. *If the status of a taxpayer, in so far as it affects the credits allowed under (1), (2) and (3), shall change during the taxable year, or if the taxpayer shall either become or cease to be a resident of the state during such taxable year, such credit shall be apportioned, in accordance with the number of months before and after such change. For the purpose of such apportionment, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month.*

Sec. 7. **Exemptions from gross income.**—That Laws 1933, Chapter 405, Section 12, subsection (c), be and the same is hereby amended to read as follows:

“(c) Amounts received, other than those specified in subsection (b) and other than amounts received as annuities, under a life insurance or endowment contract; but if such amounts when added to the amounts received under such contract before the taxable year (after deducting from the aggregate of amounts received such proportions as is represented by interest accrued prior to January 1, 1933) exceed the aggregate premiums or consideration paid, whether or not paid during the taxable year, then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to three per centum of the aggregate premiums or consideration paid for such annuity, whether or not paid during the taxable year, until the aggregate amount excluded from gross income under the income tax laws of this state plus the amounts received prior to January 1, 1933, (after deducting such proportion of such aggregate amount and amounts received as is represented by interest accrued prior to January 1, 1933) in respect to such annuity equal the aggregate premiums or consideration paid for such annuity. The amount which a transferee

for a valuable consideration of any such contract, or interest therein, shall be permitted to exclude from his gross income shall be the actual value of the consideration paid by him plus the amount of the premiums and other sums subsequently paid by him hereunder."

Sec. 8. Deductions from gross income.—That Laws 1933, Chapter 405, Section 13, subsection (d), be and the same is hereby amended to read as follows:

"(d) Losses sustained during the taxable year not compensated for by insurance or otherwise if incurred in connection with a business or transaction the gains from which, if any, would be includible in gross income; or if arising from fires not attributable to arson by the taxpayer or some one acting for him, or from storms, wrecks, other casualty, or theft. *Losses from wagering transactions shall be allowed only to the extent of the gain from such transactions.* No deductions shall be allowed under this subdivision for any loss sustained in any sale or other disposition of shares of stock or other securities if within 30 days before or after the date of such sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or disposition; but if such acquisition or the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of such loss shall be disallowed. A loss deductible under this subdivision shall be treated as sustained in the taxable year during which the property in respect of which it has occurred is disposed of by some method of disposition other than gift, devise, bequest or inheritance, but if it shall clearly appear that it is unlikely that such property can ever be disposed of, then it shall be deemed sustained during the taxable year when it first became reasonably clear that it had become worthless, provided that deductible losses arising from fires, storms, wrecks, or other casualty shall be treated as sustained in the taxable year during which the property was injured or destroyed, and deductible losses arising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. The amount of the deductible loss shall be computed on the same basis as is provided by section 16 for determining the gain or loss on the sale or other disposition of property.

Sec. 9. Same.—That Laws 1933, Chapter 405, Section 13, subsection (k), be and the same is hereby amended to read as follows:

"(k) *Payments for expenses for hospital, nursing, medical, surgical, dental and other healing services and for drugs and medical supplies incurred by the taxpayer on account of sickness of or personal injury to himself or his dependents."*

Sec. 10. **Section repealed.**—That Laws 1933, Chapter 405, Section 13-1, be and the same is hereby repealed.

Sec. 11. **Non-deductible items.**—That Laws 1933, Chapter 405, Section 14, be and the same is hereby amended by adding at the end thereof a new subsection, to be known as subsection (f), reading as follows:

"(f) Losses from sales or exchanges of property, directly or indirectly, (1) between members of a family, or (2) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per cent in value of the outstanding stock; or (3) between any person or corporation and a trust created by him or it or of which he or it is a beneficiary, directly or indirectly; for the purpose of this paragraph—(4) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (5) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; but such losses shall be allowed as deductions if the taxpayer shows to the satisfaction of the Commission that the sale or exchange was bona fide and for a fair and adequate consideration."

Sec. 12. **Exceptions.**—That Laws of 1933, Chapter 405, Section 17, be and the same hereby is amended to read as follows:

"Sec. 17. (a) No gain or loss from the following transactions shall be recognized at the time of their occurrence, except as otherwise specified in this section:

"(1) If property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

"(2) If common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

"(3) If stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

"(4) If a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

"(5) If property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

"(6) No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

"(A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

"(B) no distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and either

"(C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year, in such case the adoption by the stockholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of a transfer of the property is specified in such resolution; or

"(D) such distribution is one of the series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the Commission may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subparagraph (a) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (ii) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

"(b) (1) If an exchange would be within the provisions of subsection (a) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

"(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after December 31, 1932. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

"(c) If an exchange would be within the provisions of subsection (a) (4) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities

permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

“(1) If the corporation receiving such other property or money distributed it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

“(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

“(d) If an exchange would be within the provisions of subsection (a) (1) to (5), inclusive, of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

“(e) If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

“(f) As used in this section and section 18—

“(1) The term ‘reorganization’ means (a) a statutory merger or consolidation, or (b) the acquisition by one corporation in exchange solely for all or a part of its voting stock; of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation; or of substantially all the properties of another corporation, or (c) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (d) a recapitalization, or (e) a mere change in identity, form, or place of organization, however, effected.

“(2) The term ‘a party to a reorganization’ includes a corporation resulting from a reorganization and includes both corporations

in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

"(g) As used in this section the term 'control' means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation."

Sec. 13. Basis for determining gain or loss.—That Laws 1933, Chapter 405, Section 18, be amended by amending subsections (e) and (f) and by adding three new subsections to immediately follow subsection (h), and said subsections (e) and (f) as amended and said new subsections to read respectively as follows:

"(e) If the property was acquired after December 31, 1932, upon an exchange described in Section 17 (a) to (d) inclusive, the basis (except as provided in subsection (f) of this Section 18) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by Section 17 (a) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

"(f) If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of Section 17 (a) (6), then the basis shall be the same as it would be in the hands of the transferor.

"(i) If the property was acquired after December 31, 1932, by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

"(j) If the property was acquired after December 31, 1932 by a corporation—

(1) by the issuance of its stock or securities in connection with a transaction described in Section 17 (a) (5), (including, also cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(2) as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

"(k) If the property was acquired after December 31, 1932, as the result of a compulsory or involuntary conversion described in Section 17 (e), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made."

Sec. 14. **Same.**—That Laws 1933, Chapter 405, Section 19, be and the same is hereby amended to read as follows:

"Sec. 19. The basis for determining the gain or loss from the sale or other disposition of property acquired before January 1, 1933, shall be the fair market value thereof on said date except that, if its cost to the taxpayer, adjusted as provided in section 16 (b) for the period prior to January 1, 1933, (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value); provided that the basis prescribed by section 18 for determining gain or loss with respect to property acquired by gift, by gift through an inter vivos transfer in trust, by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purposes of this section."

Sec. 15. **Depreciation.**—That Laws of 1933, Chapter 405, Section 20, be and the same hereby is amended to read as follows:

"Sec. 20. (a) The basis upon which exhaustion, wear, tear, obsolescence, or depletion are to be allowed in respect to any property shall be the same as provided in Sections 18 and 19 for the purpose of determining the loss or gain on the sale or other disposition thereof.

"(b) Losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000, plus the gains from such sales or exchanges. For this purpose the term 'capital assets' shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

"(c) For the purposes of this Act amounts received by the holder upon retirement of bonds, debentures, notes, or certificates or other evidence of indebtedness issued by any corporation (including those issued by the government or political subdivision thereof) with interest coupons or in regular form shall be considered as amounts received in exchange therefore."

Sec. 16. **What are dividends.**—That Laws of 1933, Chapter 405, Section 21, subsections (c) and (d), be and the same hereby are amended to read as follows:

"(c) A stock dividend shall not be treated as income; but if a corporation cancels or redeems its stock whether or not such stock was issued as a stock dividend at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend the amount so distributed in cancellation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits. A dividend shall be deemed a stock dividend only if made in stock of the same kind or class as that with respect to which it was distributed.

"(d) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under Section 16 but shall be recognized only to the extent provided in Section 17. Amounts distributed in complete liquidation of a corporation shall be taken into account in computing net income only to the extent provided by subsection (b) of section 20 and for that purpose 'complete liquidation' shall include any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of property under the liquidation is to be complete within the time specified in the plan, not exceeding two years from the close of the taxable year during which is made the first of the series of distributions under the plan. No amounts received in liquidation shall be taxed as a gain until the distributee shall have received in liquidation an amount in excess of the applicable loss or gain basis of the stock in respect of which the distribution is

received, and any such excess shall be taxed as gain in the year in which received, but losses on liquidation shall be recognized only in the year in which the corporation shall have made its final distribution. No amount received in liquidation shall be treated as the distribution of an ordinary dividend."

Sec. 17. Gross income to be allocated.—That Laws 1933, Chapter 405, Section 23, subsection (d), be and the same is hereby amended to read as follows:

"(d) *Whenever a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business, including income from intangible property employed in such business and including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be governed, except as otherwise provided in sections 32-2 and 32-3, by the provisions of Section 25, notwithstanding any provisions of this Section 23 to the contrary. This shall not apply to business income subject to the provisions of subsection (a).*

Sec. 18. Personal credits on income.—That Laws 1933, Chapter 405, Section 27, be and the same is hereby amended to read as follows:

"Sec. 27. The taxes imposed by this act shall be on, or measured by, as the case may be, the taxable net income less the following credits against it:

"(a) A credit of \$1000 in the case of each corporation.

"(b) An amount for contributions or gifts made within the taxable year.

(1) To the State of Minnesota or any of its political subdivisions for exclusively public purposes.

(2) To any community chest, corporation, organization, trust, fund, or foundation operating within this state, organized and operated exclusively for religious, charitable, scientific, literary, artistic or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) To a fraternal society, order, or association, operating under the lodge system, if such contributions or gifts are to be used within this State exclusively for the purposes specified in (2); or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual.

The total credit against net income hereunder shall not exceed fifteen per cent of the taxpayer's taxable net income.

"(c) Dividends received by a corporation during the taxable year from another corporation if the recipient owns 80 per centum or more of all the voting stock of such other corporation, from income arising out of business done in this state by the corporation paying such dividends; but if the income out of which the dividends are declared was derived from business done within and without this state, then so much of the dividends shall be allowed as a credit as the amount of the taxable net income of the corporation paying the dividends assignable to this state bears to the entire net income of the corporation, such rate being determined by the returns under this Act of the corporation paying such dividends for the taxable year preceding the distribution thereof except that with respect to dividends distributed during the year 1933 the rate shall be determined by the corporation's return for that year. The burden shall be on the taxpayer of showing that the amount of dividends claimed as a credit has been received from income arising out of business done in this state.

"(d) To each building and loan association organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid during the taxable year to its members as members."

Sec. 19. **Section repealed.**—That Laws 1933, Chapter 405, Section 28, subsection (f), be and the same is hereby repealed.

Section 20. **Partnerships not to be taxed.**—That Laws 1933, Chapter 405, Section 30, subsection (c), be and the same is hereby amended to read as follows:

"(c) Each partner shall be allowed as a credit against his taxable net income his proportionate part of contributions or gifts that are within Section 27 (f) made by the partnership during its taxable year, but the sum of this latter credit allowed hereunder and that allowed the partner under Section 27 (f) shall not exceed the limit therein specified."

Section 21. **Tax to be averaged in certain cases.**—That Laws 1933, Chapter 405, be and the same is hereby amended by adding three new sections thereto immediately following section 32, to be known as sections "32-1," "32-2" and "32-3" and to read respectively as follows:

"Section 32-1. The tax imposed on a taxpayer for a period beginning in one calendar year (hereinafter called 'first calendar year') and ending in the following calendar year (hereinafter called 'second calendar year'), whenever the law applicable to the first calendar year is different from the law applicable to the second calendar year, shall

be the sum of (1) that proportion of a tax for the entire period, computed under the law applicable to the first calendar year, which the portion of such period falling within the first calendar year is of the entire period, and (2) that proportion of a tax for the entire period, computed under the law applicable to the second calendar year, which the portion of such period falling within the second calendar year is of the entire period.

"Section 32-2. The taxable net income of insurance companies taxable under this Act shall be computed as follows: Each such company shall report to the Commission the net income returned by it for the taxable year to the United States under the provisions of the Act of Congress, known as the 'Revenue Act of 1936,' or that it would be required to return as net income thereunder if it were in effect. The Commission shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business; provided, the Commission shall add to said taxable net income so apportioned to this state, the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge or premiums imposed by Extra Session Laws 1933, Chapter 53, as amended) which shall have been deducted from gross income by the company in arriving at its total net income under the provisions of said Act of Congress.

"Section 32-3. The taxable net income of investment companies shall be computed and be exclusively as follows: Each investment company transacting business as such in this state shall report to the Commission the net income returned by the company for the taxable year to the United States under the provisions of the Act of Congress known as 'The Revenue Act of 1936' less the credits provided therein, or the net income that such company would be required to return under said act less such credits, if said act were in effect. The Commission 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' shall mean any person, copartnership, association or corporation, whether local or foreign, coming within the purview of Section 7771 of Mason's Minnesota Statutes for 1927, who or which solicits payments to be made to himself or

itself and issues therefor 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 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."

Sec. 22. Partnership returns.—That Laws 1933, Chapter 405, Section 38, subsection (b), be and the same is hereby amended to read as follows:

"(b) Every person or corporation making payments during the taxable year to any person or corporation in excess of \$500 on account of either rents, interest or dividends, or in excess of \$1000.00 on account of either wages, salaries or commissions, shall make a return in respect to such payments in excess of the amounts specified, giving the names and addresses of the persons to whom such payments were made, the amounts paid to each. The state treasurer and the treasurer, or other corresponding officer by whatever name known, of every political subdivision of the state, of every city, village or borough and of every school district, shall, on or before the 1st day of March of each year, beginning with March, 1938, make and file with the Commission a report, giving the name of each employee or official to whom the state or such political subdivision, city, village, borough or school district, during the preceding calendar year, paid any salary or wages in excess of \$750, together with the last known address of such employee or official.

"The commission may also require brokers to furnish it with the names of the customers for whom they have transacted business, and with such details as to transactions of any customer as will enable it to determine whether all income tax due on profits or gains of such customers has been paid.

"The Commission may require any person acting as agent for another to make a return giving such information as may be reasonably necessary to properly assess and collect the tax imposed by this Act upon the person for whom he acts."

Sec. 23. Date of filing.—That Laws 1933, Chapter 405, Section 39, subsection (e), be and the same is hereby amended to read as follows:

"(e) In case of sickness, absence or other disability or whenever, in its judgment, good cause exists, the Commission may extend the time for filing these returns for not more than six months, except that where the failure is due to absence outside the United States it may extend the period until 30 days after the taxpayer's return to this State. It may, however, require every taxpayer in any of such

cases to file a tentative return at the time fixed for filing the regularly required return from him, and to pay a tax on the basis of such tentative return at the times required for the payment of taxes on the basis of the regularly required return from such taxpayer. The Commission may exercise its power under this subdivision (c) by general regulation only."

Sec. 24. Assessment of tax.—That Laws 1933, Chapter 405, Section 46, subsection (a), be and the same is hereby amended to read as follows:

"(a) The amount of income taxes imposed by this Act shall be assessed within three years after the return was filed, and no proceedings in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

"(b) In case of income received during the life time of a decedent, or by his estate during administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made) by the executor, administrator or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return was filed. This limitation shall not apply in the case of a corporation unless—

(1) Such written request notifies the Commission that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

"(c) If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

"(d) For the purposes of subsections (a), (b), and (c), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Sec. 25. Penalties for non-payment.—That Laws 1933, Chapter 405, Section 49, be and the same is hereby amended to read as follows:

"Sec. 49. (a) If any tax imposed by this Act, or any portion thereof, is not paid within the time herein specified for the payment

thereof, there shall be added thereto a specific penalty equal to ten per centum of the amount so remaining unpaid, which shall be collected as a part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate of six per cent per annum from the time such tax should have been paid until paid. Interest accruing prior to assessment upon the amount determined as a deficiency shall be assessed at the same time as the deficiency from the date prescribed for the payment of the tax (if the tax is paid in installments, from the date prescribed for the payments of the first installment) to the date the deficiency is assessed. Interest shall be added to the tax and be collected as a part thereof.

(b) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false return, with an intent to evade the tax, or a part thereof, imposed by this Act, shall be guilty of a felony. The term 'person' as used in this subsection includes any officer or employe of a corporation or a member or employe of a partnership who as such officer, member or employe is under a duty to perform the act in respect to which the violation occurs.

(c) All payments received shall be credited first to penalties, next to interest, and then to the tax due."

Sec. 26. **Same.**—That Laws 1933, Chapter 405, Section 49, be and the same is hereby further amended by adding a new subsection thereto, to be known as subsection (h) and to immediately follow subsection (g), reading as follows:

"(h) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false or fraudulent return, with an intent to evade the tax, or a part thereof, imposed by this Act, shall be guilty of a felony. The term 'person' as used in this subsection includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs."

Sec. 27. **Tax commission to administer act.**—That Laws 1933, Chapter 405, Section 50, be and the same is hereby amended to read as follows:

"Sec. 50. The Commission shall administer and enforce the assessment and collection of the taxes imposed by this act. It may, from time to time, make and publish such rules and regulations, in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this act, which shall include a simplified form for incomes on which the tax is less than \$10.00, which statement shall be verified or sworn to by the taxpayer, listing gross income, deductions, net income, gross tax, personal credits and tax

payable, provided, however, that detailed returns may subsequently be required of said persons by the Commission. The Commission shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this act. The Commission may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the Commission, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Commission may, after due notice and opportunity for hearing, suspend and disbar from further practice before it, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations."

Sec. 28. **Distribution of taxes.**—That Laws 1933, Chapter 405, Section 57, be and the same is hereby amended to read as follows:

"Sec. 57. The revenues derived from the taxes, interest and penalties under this Act shall be paid into the state treasury; and be credited to a special fund to be known as 'Income Tax School Fund,' and be distributed as follows:

"(a) There shall be paid from said Income Tax School Fund all refunds of taxes erroneously collected from taxpayers under this Act, as provided herein.

"(b) There shall be transferred each year from said fund to the General Revenue Fund the amount expended from the latter fund for expenses of administering this Act.

"(c) Out of the balance in said Income Tax School Fund after meeting the requirements of subsections (a) and (b), there shall be distributed to each school district of the state, including municipalities operating their own school, an amount equal to \$10.00 per child between the ages of six years and sixteen years, both years inclusive, residing in such district, provided that a child in his sixteenth year shall be included only if in actual attendance in school. Except as otherwise provided by any law heretofore or hereafter passed with respect to particular school districts, the money so distributed shall be used for the following purposes only:

(1) Payment or providing for the payment of any bonded or other indebtedness of such district outstanding January 1, 1933.

(2) Providing for the payment of any bonded or other indebtedness thereafter incurred until such debts are fully paid or payment thereof provided for.

(3) Any such revenue not required to pay or provide for the payment of any such indebtedness shall be used to pay current operating expenses and to reduce and replace levies on real and personal property.

(4) *Where the county auditor is required by any law to levy a tax to pay any interest or principal of any bonded indebtedness of a school district, such district may on or before October 1 of any year pay any of such money available therefor to the county treasurer to pay any interest or principal maturing or becoming due during the next ensuing year, in which case the auditor shall reduce the amount of the levy so required to be made by him by the amount so paid to the treasurer.*

"(d) If any money remains in said Income Tax School Fund after making the distributions specified in subsection (a), (b) and (c), such balance, not in excess, however, of the amount appropriated for such purpose, shall be used to pay special school aid provided by law, and the amount so used shall be deducted from the appropriation therefor.

(e) The moneys available for distribution under subsections (c) and (d), shall be distributed by the State Board of Education semi-annually, in the same manner, as nearly as practicable, as now provided by law governing the distribution of state funds by said board, except that each school district shall be entitled to receive the money distributable under subsection (c) without being subject to any conditions."

Section 29. Taxpayer may determine net income.—That Laws 1933, Chapter 405, Section 26, be and the same is hereby amended to read as follows:

"If the methods heretofore prescribed for the allocation of income to this state will not properly reflect the income assignable hereto, the separate accounting method shall be used if practicable and if it will properly reflect such income, and if neither the prescribed methods nor such separate accounting method will properly reflect the income assignable to this state, the Commission may permit or require the taxpayer to use other methods, and in that connection may permit or require the direct allocation of such parts of the taxable net income of a business carried on partly within and partly without this state as can be directly allocated with a reasonable degree of accuracy.

Every taxpayer feeling aggrieved by the application to his case of the methods heretofore prescribed or required by the Commission may petition the Commission to be allowed to determine the taxable net income allocable to this state on some other basis which will be allowed if in the opinion of the Commission the method proposed by the taxpayer will more clearly reflect the taxable net income properly assignable to this state, or if it will remove injustices resulting to the taxpayer from the use of those methods. The methods heretofore prescribed or required or permitted to be used by the Commission hereunder, and the results obtained thereunder, shall be presumed to be valid, and the taxpayer shall have the burden of establishing the invalidity of both the method and its results as applied to his case."

Section 30. Failure to make return or to pay tax.—That Laws 1933, Chapter 405, Section 44, be and the same is hereby amended to read as follows:

"Section 44. If any person or corporation required by this act to file any return shall fail to do so within the time prescribed by this act or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Commission file such return, or corrected return, within 10 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within said time to file such return, or corrected return, the Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, which tax, (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 10 days after the Commission has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. *Any such return or assessment made by the Commission on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.*"

Section 31. Reports not to be public record.—That Laws of 1933, Chapter 405, Section 56, subsection (a), be and the same is hereby amended to read as follows:

"Section 56. (a) *It shall be unlawful for the Commission or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this act, or any information concerning, the taxpayer's affairs acquired from his or its records, officers or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding*

involving taxes due under this act from the taxpayer making such return. The Commission may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein and if the laws of the United States or of such state provide substantially for the same secrecy in respect to the information revealed thereby as is provided by our laws. The Commission and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this act. Nothing herein contained, however, shall be construed to prohibit the Commission from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof."

Section 32. Who shall make returns.—That Laws 1933, Chapter 405, Section 33, be and the same is hereby amended to read as follows:

"Section 33. The following persons shall make a return under oath for each taxable year (or fractional part thereof where permitted or required by this Act):

(a) Individuals with respect to their own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if their gross income exceeds \$5000.

(b) The executor or administrator of the estate of a decedent with respect to the taxable net income of such decedent for that part of the taxable year during which he was alive, if such taxable net income exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such decedent's gross income for the aforesaid period exceeds \$1000.

(c) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such estate's gross income exceeds \$1000.

(d) The trustee or other fiduciary of property held in trust with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if the gross income of such trust exceeds \$1000, if, in either case such trust belongs to the class of taxable persons.

(e) *The guardian of an infant or other incompetent person with respect to such infant's or other person's taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if their gross income exceeds \$1000.*

(f) *Every corporation with respect to its taxable net income if in excess of \$1000, or if its gross income exceeds \$5000. The return in this case shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer.*

(g) *The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed (or, if the taxpayer is a corporation, if the taxable net income exceeds \$1000), or if such taxpayer's gross income exceeds \$5000."*

Section 33. **Section repealed.**—That Laws 1933, Chapter 382, is hereby repealed.

Section 34. **Effective on passage.**—(a) This law shall take effect from and after its passage, but shall apply in computing taxes as follows:

(1) To the taxable year 1937 and all subsequent years of taxpayers reporting on a calendar year basis.

(2) To the taxable year ending during the calendar year 1937 of taxpayers reporting on a fiscal year basis, in which case the tax shall be computed as provided in Section 32-1 hereof; and to all subsequent taxable years of such taxpayers.

(3) To every taxable year commencing on or after January 1, 1937, of every other taxpayer.

(b) All provisions of Laws 1933, Chapter 405, as they existed prior to the passage of this Act, shall remain in full force and effect so far as necessary to preserve any liability for taxes, interest and penalties incurred prior to the passage of this Act.

Filed July 15, 1937, without approval.

CHAPTER 50—H. F. No. 7

An act to amend Mason's Minnesota Statutes of 1927, Section 2292, as amended by Laws 1935, Chapter 334, and Section 2293, sub-sections 2b and 2c (2), relating to inheritance, bequests, gifts and transfer taxes.

Be it enacted by the Legislature of the State of Minnesota: