

conviction thereof shall be punished by a fine of not to exceed \$100.00 or a sentence of not to exceed 90 days in the county jail.

Sec. 11. **Effective January 1, 1942.**—This act shall take effect and be in force from and after the first day of January, 1942.

Approved April 28, 1941.

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CHAPTER 550—H. F. No. 1483

*An act relating to taxes on and measured by income; amending Mason's Supplement 1940, Sections 2394-3, 2394-5, 2394-6, 2394-11, 2394-12, 2394-13, 2394-14, 2394-19, 2394-20, 2394-21, 2394-28a, 2394-33, 2394-42, 2394-44, 2394-46, 2394-47, 2394-25, 2394-28b, 2394-27, and Laws 1933, Chapter 405, Section 49, as amended by Extra Session Laws 1937, Chapter 49, Sections 25 and 26, and by Laws 1939, Chapter 446, Section 16, being Mason's Supplement 1940, Section 2394-49, and repealing Mason's Supplement 1940, Section 2394-32, Subsection (a).*

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

Section 1. **Law amended.**—Mason's Supplement 1940, Section 2394-3, is hereby amended to read as follows:

"2394-3. **Classes of tax payers.**—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 *not taxable under Section 2 who own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both.*

(b) Resident and nonresident 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 nonresidents or by domestic or foreign corporations."

Sec. 2. Law amended.—Mason's Supplement 1940, Section 2394-5, is hereby amended to read as follows:

"2394-5. Exemptions from act.—The following corporations, *individuals, estates, trusts* and organizations shall be exempted from taxation under this act, *provided that every such person or corporation claiming exemption under this act, in whole or in part, must file with the commissioner upon request such financial statements as are necessary to enable him to determine the taxable status of any income or activity:*

(a) National and state banks, except as such banks are subject to the excise tax imposed by sections 32-4 and 32-5.

(b) Corporations, *individuals, estates and trusts* engaged in the business of mining or producing iron ore; but if any such corporation, *individual, estate or trust* engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in 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 of 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) Cooperative 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 sup-

plies 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 purchasers. 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.

(n) *Corporations organized by an association exempt under the provisions of paragraph (g), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation 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 corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.*

(o) *Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this act.*

(p) *Voluntary employees' beneficiary associations providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents if no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual."*

**Sec. 3. Law amended—rates of tax—credits—apportionments.**—Mason's Supplement 1940, Section 2394-6, Subsection (c) is hereby amended to read as follows:

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

1. In the case of an unmarried individual, and the estate of a decedent \$10.00.

2. In the case of a married individual, living with husband or wife, and in the case of a head of a household, \$30.00. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them.

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 stocks, notes, bonds, accounts receivable or other evidence of indebtedness, special privileges, franchises, good-will 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, insofar 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. 4. Law amended.—Mason's Supplement 1940, Section 2394-11, is hereby amended to read as follows:

**"2394-11. What is gross income.**—The term "gross income" shall include every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services, whatsoever; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any source whatever. Items of gross income includible within said definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by Section 9, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that such amounts were accumulated through deductions from gross income or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received."

**Sec. 5. Law amended.**—Mason's Supplement 1940, Section 2394-12, Subsection (e) is hereby amended to read as follows:

**"2394-12 (e). Exemptions from gross income.**—Amounts received by any person from the United States or the state of Minnesota by way of a pension, *public employee retirement benefit, social security benefit or railroad retirement benefit*, family allotment, or other similar allowance."

**Sec. 6. Law amended.**—Mason's Supplement 1940, Section 2394-12, Subsection (g) is hereby amended to read as follows:

**"2394-12 (g). Exemptions from gross income.**—Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; provided that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies or its instrumentalities shall be excluded from gross income for all taxable years ending prior to January 1, 1939; provided further that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies or its instrumentalities for taxable years ending prior to January 1, 1939 shall be excluded only to the extent that salaries,

wages, commissions, fees and other compensation received from the state of Minnesota, its political or governmental subdivisions, its municipalities or its governmental agencies or instrumentalities for said year are excluded from gross income under the Federal Revenue Acts; *provided further that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies, or its instrumentalities, by federal employees residing in 'federal areas' shall be excluded from gross income for all taxable years ending prior to January 1, 1941.*"

Sec. 7. Law amended.—Mason's Supplement 1940, Section 2394-13 is hereby amended to read as follows:

"2394-13. **Deductions from gross income.**—The following deductions from gross income shall be allowed in computing net income:

(a) Ordinary and necessary expenses paid or incurred in conducting the activity or in carrying on the trade, *profession, gainful occupation* or business from which the gross income is derived, including a reasonable allowance for salaries and voluntary or compulsory contributions made by employers to maintain a voluntary or compulsory system of unemployment insurance or a system of old age pensions for their employees, and any welfare work for the benefit of such employees.

(b) The interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludible from gross income under Section 12, or on indebtedness incurred or continued in connection with the purchasing or carrying of an annuity.

(c) Taxes paid or accrued within the taxable year, except (a) income or franchise taxes imposed by this act; and (b) taxes assessed against local benefits of a kind deemed in law to increase the value of the property assessed; and (c) inheritance, and estate taxes. Income taxes permitted to be deducted hereunder shall, regardless of the methods of accounting employed, be deductible only in the taxable year in which paid. Taxes imposed upon a shareholder's interest in a corporation which are paid by the corporation without reimbursement from the shareholder shall be deductible only by such corporation.

(d) Losses sustained during the taxable year not compensated for by insurance or otherwise if incurred in connec-

tion 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 sub-division 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.

(e) Debts ascertained to be worthless and charged off during the taxable year, but this last shall be required only if the taxpayer keeps regular books of account; provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided further, that the *commissioner* may allow a bad debt to be deducted or charged off in part.

(f) A reasonable allowance for the exhaustion, wear and tear of property the periodical income from which is includible in gross income, and of property used in an occupation or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person the deduction shall be computed

as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiary and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of buildings or other structures or improvements constructed or made on leased premises by a lessee, and the fixtures and machinery therein installed, the lessee alone shall be entitled to the allowance of this deduction.

(g) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the case of leases the deduction shall be equitably apportioned between the lessor and lessee in accordance with rules prescribed by the *commissioner*. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(h) The amount of the deduction under subdivision (f) and (g) shall be computed on the basis specified in Section 20.

(i) The deductions provided for herein shall be taken for the taxable year in which paid or accrued, dependent upon the method of accounting employed in computing net income, unless in order to clearly reflect income they should be taken as of a different year.

(j) No deductions shall be allowed unless the taxpayer, when thereunto requested by the *Commissioner* furnishes it with information sufficient to enable it to determine the validity and correctness thereof.

(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 or of personal injury to himself or his dependents.

(l) *An allowance for amortization of war facilities to the extent that such deduction is finally allowed under Section 124 of the internal revenue code provided no deduction*

*has been claimed with respect thereto under subsection 13 (f) or any other section or subsection of this act."*

**Sec. 8. Law amended.**—Mason's Supplement 1940, Section 2394-14 is hereby amended to read as follows:

"2394-14. **Non-deductible items.**—In computing the net income no deduction shall in any case be allowed for:

- (a) Personal, living or family expenses;
- (b) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (c) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (d) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;
- (e) The shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance.
- (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, ancestor, 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.
- (g) In computing net income, no deduction shall be allowed under Section 13 (a), relating to expenses incurred or under Section 13 (b), relating to interest accrued; and
  - (1) If such expenses or interest not paid within the taxable year or within two and one-half months after the close thereof; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under Section 14 (f).

*(h) Contributions by employees under the federal railroad retirement act, the federal social security act, or to Minnesota public employee retirement funds."*

Sec. 9. Law amended.—Mason's Supplement 1940, Section 2394-19, is hereby amended to read as follows:

"2394-19. Basis for determining gain or loss for sale or other disposition of property acquired before January 1, 1933.—The basis for determining the gain from the sale or other disposition of property acquired before 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). *The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933 shall be the cost to the taxpayer adjusted as provided in Section 16 (b) for the period prior to January 1, 1933.* The basis prescribed by Section 18 for determining gain or loss with respect to property acquired by gift, by gift through an intervivos 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 purpose of this section."

Sec. 10. Law amended — Deductions. — Mason's Supplement 1940, Section 2394-20, Subsection (b) is hereby amended to read as follows:

"(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,

*or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in Section 13 (f) or amortization allowance provided in Section 13 (1)."*

**Sec. 11. Law amended—What are dividends.**—Mason's Supplement 1940, Section 2394-21, Subsection (d) is hereby amended to read as follows:

"(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. No amount received in liquidation shall be treated as the distribution of an ordinary dividend."

**Sec. 12. Law amended—Estates of trusts—computation—credits and deductions.**—Mason's Supplement 1940, Section 2394-28a, Subsection (c), is hereby amended to read as follows:

"(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary, *to the extent that such*

*amount is properly includible in computing the taxable net income of such legatee, heir or beneficiary under the provisions of this act."*

**Sec. 13. Law repealed.**—Mason's Supplement 1940, Section 2394-32, Subsection (a) is hereby repealed.

**Sec. 14. Law amended—Partnership returns.**—Mason's Supplement 1940, Section 2394-38, Subsection (b) 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 \$500.00 on account of rents, or in excess of \$100.00 on account of interest or dividends, or in excess of \$1,000 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 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 *commissioner* 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 \$1,000 together with the last known address of such employee or official.

The *commissioner* 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 due on profits or gains of such customers has been paid.

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

**Sec. 15. Law amended—Tax to be paid when returns are filed.**—Mason's Supplement 1940, Section 2394-42, is hereby amended to read as follows:

(a) All taxes imposed by this act shall be paid at the time fixed for filing the return on which the tax is based, except that they may, at the election of the taxpayer, be paid in two equal installments, the first of which shall be paid at the time above specified, and the second on or before six

months thereafter. *Provided, however, that with respect to all such taxes payable after January 1, 1942, when the amount due from any taxpayer is \$30.00 or more, any such taxpayer may elect to pay the tax in four equal installments in which case the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the 15th day of the third month, the third installment on the 15th day of the sixth month, and the fourth installment on the 15th day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.*

*(b) At the request of the taxpayer, and for good cause shown the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension."*

**Sec. 16. Law amended.**—Mason's Supplement 1940, Section 2394-44 is hereby amended to read as follows:

**"2394-44. Failure to make return or pay tax.**—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 *commissioner* file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within said time to file such return, or corrected return, the *commissioner* 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 *commissioner* has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the *commis-*

*sioner* 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."

**Sec. 17. Law amended—Time for assessment and collections.**—Mason's Supplement 1940, Section 2394-46, Subsection (g) is hereby amended to read as follows:

"(g) Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun

(1) within four years after the return was filed, or

(2) within six months after the expiration of the period agreed upon by the *commissioner* and the taxpayer, pursuant to the provisions of subsection (h) hereof."

**Sec. 18. Law amended—Refundment of over-payments.**—Mason's Supplement 1940, Section 2394-47, Subsection (b) is hereby amended to read as follows:

"(b) If the claim is denied in whole or in part, the taxpayer may commence an action against the *commissioner* to recover any over-payments of taxes claimed to be refundable but for which the *commissioner* has issued no certificate of refundment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or, if an estate or trust, of the principal place of its administration, or in the district court for Ramsey county. *Such action may be commenced after the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. If the commissioner has not acted within two years after the claim is filed it shall be considered denied.*"

**Sec. 19. Law amended.**—Laws of 1933, Chapter 405, Section 49, as amended by Extra Session Laws of 1937, Chapter 49, Sections 25 and 26, and by Laws of 1939, Chapter 446, Section 16, being Mason's Supplement 1940, Section 2394-49, is hereby amended to read as follows:

**"2394-49. Penalties for non-payment—nonpayment—failure to make return and false return—application of payments.**

—(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 four per centum of the amount so remaining unpaid if the failure to pay is not for more than thirty days with an additional two per cent for each thirty days or fraction thereof during which such failure continues, not exceeding ten per cent in the aggregate. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty shall bear interest at the rate 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. Where an extension of time for payment has been granted under Section 42 (b) interest shall be paid at the rate of six per cent per annum from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

(b) If any person, with intent to evade the tax imposed by this act, shall fail to file any return required by this act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to fifty per centum of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax.

(c) 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 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.

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

(e) The commissioner shall have power to abate penalties when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general."

Sec. 20. Law amended—net income to be allocated.—Mason's Supplement 1940, Section 2394-25 is hereby amended to read as follows:

“(A) The taxable net income from a trade or business carried on partly within *and* partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deduction of the kind permitted by Section 13 so far as connected with or allocable against the production or receipt of such income. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the manufacture in Minnesota or within and without Minnesota of personal property and the sale of said property within and without the state, said remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state and through, from or by offices, agencies, branches or stores within this state is of the total sales wherever made;

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

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

(d) Provided, however, that the percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 per cent of the percentage determined under subdivision (A) (1) (a) above, 15 per cent of the percentage determined under subdivision (a) (1) (b) above, and 15 per cent of the percentage determined under subdivision (a) (1) (c) above.

(2) (a) In all other cases the proportion of such remainder to be assigned to this state shall be that which the sales, gross earnings or receipts from business operations in whole or in part within this state bear to the total sales, gross earnings or receipts from business operations wherever conducted.

(b) If the methods prescribed under subsection (2) (a)

will not properly reflect taxable net income assignable to the state, there shall be used if practicable and if such use will properly and fairly reflect such income (1) the arithmetical average of the three percentages set forth in subdivisions (a) (b) (c) of subsection (1) of this section, or (2) the separate or segregated accounting method.

(3) The sales payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used by the taxpayer *during* the taxable year in respect of which the tax is being computed.

(4) For the purposes of this section, in determining the amount of sales made within Minnesota, there shall be excluded therefrom sales negotiated or effected in behalf of the taxpayer by agents or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the taxpayer or by his agents or agencies outside the state and sales otherwise determined by the *commissioner* to be attributable to the business conducted on such premises. If the *commissioner* finds that the taxpayer maintains an office, warehouse or other places of business outside the state for the purpose of reducing its tax under this section it shall in determining the amount of taxable net income include therein the proceeds of sales attributed by the taxpayer to the business conducted at such place outside the state.

(B) The methods prescribed by subsection (A) shall apply wherever and insofar as, the business carried on within this state is an integral part of a business carried on both within and without this state.

(C) Nothing in this section shall prevent the application of Section 23 and 24 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without this state."

Sec. 21. Law amended—credits against tax.—Mason's Supplement 1940, Section 2394-27, is hereby amended by adding the following new subsection to be known as subsection (e):

*"(e) to each mutual investment company, as defined by the United States internal revenue code, Section 361, an amount equal to the interest and dividends paid during the taxable year, and to each building and loan and savings and*

*loan association, an amount equal to the dividends paid during the taxable year to its members as members."*

Sec. 22. **Law amended.**—Mason's Supplement 1940, Section 2394-47, subsection (a), is hereby amended to read as follows:

"2394-47. **Refundment of overpayments.**—(a) A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in subdivisions (a) and (e) of Section 45) an amount of tax for any year in excess of the amount legally due for that year, may file with the *commissioner* a claim for the refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected, *or within three and one-half years from the filing of the return, whichever period is the longer.* Upon the filing of a claim the *commissioner* shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the *commissioner* shall issue *his* certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of three per cent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this act, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose."

Sec. 23. **Law amended.**—Mason's Supplement 1940, Section 2394-28b is hereby amended to read as follows:

"2394-28b. **Same—personal credit.**—An estate shall be allowed the same personal credit against the tax as is allowed to a single person under Section 6 (c) (1).

Sec. 24. **Effective date—application of act.**—(a) - This law shall take effect from and after its passage, but shall apply in computing taxes as follows:

(1) To the taxable year 1941 and all subsequent years of taxpayers reporting on a calendar year basis.

(2) To the taxable year ending during the calendar year 1941 of taxpayers reporting on a fiscal year basis, in which case the tax shall be computed as provided in Section 2394-32

(a) of Mason's Supplement 1940 and to all subsequent taxable years of such taxpayers.

(3) To every taxable year commencing on or after January 1, 1941 of every other taxpayer.

(b) All provisions of Laws 1933, Chapter 405, and Extra Session Laws of 1935, Chapter 87, and Extra Session Laws of 1937, Chapter 49 and Laws of 1939, Chapter 446 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.

Approved April 28, 1941.

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#### CHAPTER 551—H. F. No. 1502

*An act relating to wild animals, regulating the taking of beaver.*

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

**Section 1. Taking of beaver in certain cases.**—Whenever beaver shall at any time, in any locality, be causing substantial damage to railroad right-of-way, public highway, or private property, within or without a game refuge, the commissioner of conservation may, upon receipt of a license fee of \$2.50, issue to any person as hereafter provided, a permit to take beaver causing such damage, specifying therein the number, the time and the place where the same may be taken.

**Sec. 2. Shall report in ten days.**—The permittee shall report within ten days after the taking of any beaver, the number so taken, to the commissioner or to a game warden designated by him and shall submit the skins and such other portions of all such beaver in the manner and at the time required by the order of the commissioner, to the inspection of the commissioner or warden. Thereupon the commissioner or warden shall issue and affix to each skin a distinctive tag, stamp or seal. Licensee shall pay the commissioner a fee of \$1.00 for each tag, stamp or seal so issued. The beaver skins so taken or tagged, stamped, or sealed may be bought, sold or transported at any time upon compliance with all applicable provisions of law relating thereto. The commissioner shall