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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3119

03/27/2023 Authored by Davids
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; individual income; providing an exemption for income earned
1.3 by certain nonresident employees; proposing coding for new law in Minnesota
1.4 Statutes, chapter 290.

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

1.6 Section 1. 290.0811] INCOME OF CERTAIN NONRESIDENTS.

1.7 Subdivision 1. Exemption allowed. Notwithstanding section 290.081, compensation
1.8 received by a qualifying nonresident individual for employment duties in Minnesota is
1.9 excluded from gross income, subject to the limitations in this section.

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

1.12 (b) "Employee" and "employer" have the meanings given in section 290.92, subdivision
1.13 1.

1.14 (c) "Employment duties" means professional or personal services performed for an
1.15 employer by an employee who is a qualifying nonresident individual.

1.16 (d) "Entertainer" has the meaning given in section 290.9201.

1.17 (e) "Qualifying nonresident individual" means an individual:

1.18 (1) whose residence, place of abode, and place customarily returned to at least once a
1.19 month is in another state;

1.20 (2) who is paid wages for employment duties, excluding duties performed as an
1.21 entertainer, in Minnesota on 30 or fewer days in the taxable year;

2.1 (3) who performed employment duties in more than one state during the calendar year;
 2.2 and

2.3 (4) whose state of residence provides a substantially similar exclusion or does not impose
 2.4 an individual income tax, or whose income is exempt from taxation in Minnesota under the
 2.5 United States Constitution, or the Internal Revenue Code.

2.6 (f) "Time and attendance system" means a system through which an employee is required,
 2.7 on a contemporaneous basis, to record the employee's work location for every day worked
 2.8 outside the state where the employee's employment duties are primarily performed and is
 2.9 designed to allow the employer to allocate the employee's compensation for income tax
 2.10 purposes among all states in which the employee performs employment duties for the
 2.11 employer.

2.12 Subd. 3. **Withholding exemption; limitation.** (a) Wages paid to a qualifying nonresident
 2.13 individual are exempt from the withholding requirements under section 290.92, and the
 2.14 filing requirements under section 289A.09, subject to the limitations of paragraph (b).

2.15 (b) If during the taxable year, the number of days an employee spends performing
 2.16 employment duties in Minnesota exceeds the 30-day threshold under subdivision 1, the
 2.17 withholding requirements under section 290.92, and the filing requirements under section
 2.18 289A.09, apply for every day in that calendar year, including the first 30 days, on which
 2.19 the employee performs employment duties in Minnesota.

2.20 Subd. 4. **Employers; application of penalties.** The commissioner shall not apply
 2.21 penalties or interest otherwise applicable under chapter 289A for failing to deduct and
 2.22 withhold income taxes as required under section 290.92, if when determining whether
 2.23 withholding was required, the employer met either of the following conditions:

2.24 (1) the employer at its sole discretion maintains a time and attendance system and relied
 2.25 on data from that system; or

2.26 (2) if the employer does not maintain a time and attendance system, and the employer
 2.27 relies on either:

2.28 (i) the employer's own records maintained in the regular course of business of the
 2.29 employee's location; or

2.30 (ii) the employee's reasonable determination of the time the employee expected to spend
 2.31 performing employment duties in Minnesota, the employer has no actual knowledge of
 2.32 fraud by employee in making the determination, and the employer and the employee did
 2.33 not collude to evade taxation in making the determination.

3.1 Subd. 5. **Timing of employment duties performed.** For the purposes of this section,
3.2 an employee shall be considered to be performing employment duties within Minnesota for
3.3 a day if the employee performs more of the employee's employment duties in Minnesota
3.4 than in any other state during that day. Any portion of the day during which the employee
3.5 is in transit must not be considered in determining the location of an employee's performance
3.6 of employment duties.

3.7 Subd. 6. **Severability.** If any provision of this section or the application of a provision
3.8 of this section to any person or circumstance is held to be unconstitutional, then all other
3.9 provisions of this section shall remain valid and any rights, remedies, and privileges that
3.10 have been otherwise accrued by this section shall remain in effect, and may be proceeded
3.11 with and concluded under the provisions of this chapter or other applicable law.

3.12 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.13 31, 2023.