

(SENATE AUTHORS: PEDERSON, Gimse and Limmer)

DATE	D-PG	OFFICIAL STATUS
03/14/2011	501	Introduction and first reading Referred to Taxes See HF2337, Art. 2, Sec. 7, 21 (vetoed)

1.1

A bill for an act

1.2

relating to taxation; repealing two percent contractor withholding; amending

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Minnesota Statutes 2010, section 289A.31, subdivision 5; repealing Minnesota

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Statutes 2010, section 290.92, subdivision 31.

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

1.6

Section 1. Minnesota Statutes 2010, section 289A.31, subdivision 5, is amended to

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read:

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Subd. 5. **Withholding tax, withholding from payments to out-of-state**

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**contractors, and withholding by partnerships and small business corporations.** (a)

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Except as provided in paragraph (b), an employer or person withholding tax under section

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290.92 or 290.923, subdivision 2, who fails to pay to or deposit with the commissioner a

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sum or sums required by those sections to be deducted, withheld, and paid, is personally

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and individually liable to the state for the sum or sums, and added penalties and interest,

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and is not liable to another person for that payment or payments. The sum or sums

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deducted and withheld under section 290.92, subdivision 2a or 3, or 290.923, subdivision

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2, must be held as a special fund in trust for the state of Minnesota.

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(b) If the employer or person withholding tax under section 290.92 or 290.923,

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subdivision 2, fails to deduct and withhold the tax in violation of those sections, and later

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the taxes against which the tax may be credited are paid, the tax required to be deducted

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and withheld will not be collected from the employer. This does not, however, relieve the

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employer from liability for any penalties and interest otherwise applicable for failure to

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deduct and withhold. This paragraph does not apply to an employer subject to paragraph

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~~(g), or to a contractor required to withhold under section 290.92, subdivision 31.~~

(c) Liability for payment of withholding taxes includes a responsible person or entity described in the personal liability provisions of section 270C.56.

(d) Liability for payment of withholding taxes includes a third-party lender or surety described in section 270C.59.

(e) A partnership or S corporation required to withhold and remit tax under section 290.92, subdivisions 4b and 4c, is liable for payment of the tax to the commissioner, and a person having control of or responsibility for the withholding of the tax or the filing of returns due in connection with the tax is personally liable for the tax due.

(f) A payor of sums required to be withheld under section 290.9705, subdivision 1, is liable to the state for the amount required to be deducted, and is not liable to an out-of-state contractor for the amount of the payment.

(g) If an employer fails to withhold tax from the wages of an employee when required to do so under section 290.92, subdivision 2a, by reason of treating such employee as not being an employee, then the liability for tax is equal to three percent of the wages paid to the employee. The liability for tax of an employee is not affected by the assessment or collection of tax under this paragraph. The employer is not entitled to recover from the employee any tax determined under this paragraph.

**EFFECTIVE DATE.** This section is effective for payments made after June 30, 2011.

Sec. 2. **REPEALER.**

Minnesota Statutes 2010, section 290.92, subdivision 31, is repealed.

**EFFECTIVE DATE.** This section is effective for payments made after June 30, 2011.

APPENDIX  
Repealed Minnesota Statutes: 11-1532

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

Subd. 31. **Payments to persons who are not employees.** (a) For purposes of this subdivision, "contractor" means a person carrying on a trade or business described in industry code numbers 23 through 238990 of the North American Industry Classification System.

(b) A contractor who makes payments to an individual carrying on a trade or business described in paragraph (a) as a sole proprietorship must deduct and withhold two percent of the payment as Minnesota withholding tax when the amount the contractor paid to that individual during the calendar year exceeds \$600.

(c) A payment subject to withholding under this subdivision must be treated as if the payment were a wage paid by an employer to an employee. The requirements in the definitions of "employee" and "employer" in subdivision 1 relating to geographic location apply in determining whether withholding tax applies under this subdivision, but without regard to whether the contractor or the individual otherwise satisfy the definition of an employer or an employee. Each recipient of a payment subject to withholding under this subdivision must furnish the contractor with a statement of the recipient's name, address, and Social Security account number.