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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **2541**

03/08/2016 Authored by Garofalo and Albright

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to commerce; lowering certain business registration fees; modifying
1.3 sales tax and employee withholding requirements for small employers; defining
1.4 employees of small employers as independent contractors; amending Minnesota
1.5 Statutes 2014, sections 289A.18, subdivision 4; 289A.20, subdivision 4; 290.92,
1.6 subdivision 1; 322C.0201, by adding a subdivision; 333.055, by adding a
1.7 subdivision; proposing coding for new law in Minnesota Statutes, chapter 181.

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

1.9 Section 1. **[181.173] SMALL EMPLOYER EXEMPTION.**

1.10 Subdivision 1. **Definition.** For the purposes of this section, "small employer" means
1.11 a private business reporting less than \$100,000 in gross annual receipts in the preceding
1.12 calendar year and employing one or more employees.

1.13 Subd. 2. **Employment law exemption.** Notwithstanding any law to the contrary, an
1.14 employee of a small employer is deemed to be an independent contractor for the purposes
1.15 of this chapter and chapter 177.

1.16 Sec. 2. Minnesota Statutes 2014, section 289A.18, subdivision 4, is amended to read:

1.17 Subd. 4. **Sales and use tax returns.** (a) Sales and use tax returns must be filed on or
1.18 before the 20th day of the month following the close of the preceding reporting period,
1.19 except that annual use tax returns provided for under section 289A.11, subdivision 1, must
1.20 be filed by April 15 following the close of the calendar year, in the case of individuals.
1.21 Annual use tax returns of businesses, including sole proprietorships, and annual sales tax
1.22 returns must be filed by February 5 following the close of the calendar year.

(b) Returns for the June reporting period filed by retailers required to remit their June liability under section 289A.20, subdivision 4, paragraph (b), are due on or before August 20.

(c) If a retailer has an average sales and use tax liability, including local sales and use taxes administered by the commissioner, equal to or less than \$500 per month in any quarter of a calendar year, and has substantially complied with the tax laws during the preceding four calendar quarters, the retailer may request authorization to file and pay the taxes quarterly in subsequent calendar quarters. The authorization remains in effect during the period in which the retailer's quarterly returns reflect sales and use tax liabilities of less than \$1,500 and there is continued compliance with state tax laws.

(d) If a retailer has an average sales and use tax liability, including local sales and use taxes administered by the commissioner, equal to or less than \$100 per month during a calendar year, and has substantially complied with the tax laws during that period, the retailer may request authorization to file and pay the taxes annually in subsequent years. The authorization remains in effect during the period in which the retailer's annual returns reflect sales and use tax liabilities of less than \$1,200 and there is continued compliance with state tax laws.

(e) The commissioner may also grant quarterly or annual filing and payment authorizations to retailers if the commissioner concludes that the retailers' future tax liabilities will be less than the monthly totals identified in paragraphs (c) and (d). An authorization granted under this paragraph is subject to the same conditions as an authorization granted under paragraphs (c) and (d).

(f) A taxpayer who is a materials supplier may report gross receipts either on:

- (1) the cash basis as the consideration is received; or
- (2) the accrual basis as sales are made.

As used in this paragraph, "materials supplier" means a person who provides materials for the improvement of real property; who is primarily engaged in the sale of lumber and building materials-related products to owners, contractors, subcontractors, repairers, or consumers; who is authorized to file a mechanics lien upon real property and improvements under chapter 514; and who files with the commissioner an election to file sales and use tax returns on the basis of this paragraph.

(g) Notwithstanding paragraphs (a) to (f), a seller that is not a Model 1, 2, or 3 seller, as those terms are used in the Streamlined Sales and Use Tax Agreement, that does not have a legal requirement to register in Minnesota, and that is registered under the agreement, must file a return by February 5 following the close of the calendar year in which the seller initially registers, and must file subsequent returns on February 5 on an

annual basis in succeeding years. Additionally, a return must be submitted on or before the 20th day of the month following any month by which sellers have accumulated state and local tax funds for the state in the amount of \$1,000 or more.

(h) A person reporting less than \$100,000 in gross receipts in the preceding calendar year may elect to file an annual sales tax return.

Sec. 3. Minnesota Statutes 2014, section 289A.20, subdivision 4, is amended to read:

Subd. 4. **Sales and use tax.** (a) The taxes imposed by chapter 297A are due and payable to the commissioner monthly on or before the 20th day of the month following the month in which the taxable event occurred, or following another reporting period as the commissioner prescribes or as allowed under section 289A.18, subdivision 4, paragraph (f) ~~or~~ (g), or (h), except that use taxes due on an annual use tax return as provided under section 289A.11, subdivision 1, are payable by April 15 following the close of the calendar year.

(b) A vendor having a liability of \$250,000 or more during a fiscal year ending June 30 must remit the June liability for the next year in the following manner:

(1) Two business days before June 30 of the year, the vendor must remit 81.4 percent of the estimated June liability to the commissioner.

(2) On or before August 20 of the year, the vendor must pay any additional amount of tax not remitted in June.

(c) A vendor having a liability of:

(1) \$10,000 or more, but less than \$250,000 during a fiscal year ending June 30, 2013, and fiscal years thereafter, must remit by electronic means all liabilities on returns due for periods beginning in all subsequent calendar years on or before the 20th day of the month following the month in which the taxable event occurred, or on or before the 20th day of the month following the month in which the sale is reported under section 289A.18, subdivision 4; or

(2) \$250,000 or more, during a fiscal year ending June 30, 2013, and fiscal years thereafter, must remit by electronic means all liabilities in the manner provided in paragraph (a) on returns due for periods beginning in the subsequent calendar year, except for 81.4 percent of the estimated June liability, which is due two business days before June 30. The remaining amount of the June liability is due on August 20.

(d) Notwithstanding paragraph (b) or (c), a person prohibited by the person's religious beliefs from paying electronically shall be allowed to remit the payment by mail. The filer must notify the commissioner of revenue of the intent to pay by mail before doing so on a form prescribed by the commissioner. No extra fee may be charged to a person making payment by mail under this paragraph. The payment must be postmarked

at least two business days before the due date for making the payment in order to be considered paid on a timely basis.

Sec. 4. Minnesota Statutes 2014, section 290.92, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (1) **Wages.** For purposes of this section, the term "wages" means the same as that term is defined in section 3401(a) and (f) of the Internal Revenue Code.

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

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

(4) **Employer.** For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, limited liability companies, and corporations transacting business in or deriving any income from sources within the state of Minnesota for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under section 290.05 and further includes, but is not limited to, officers of corporations who have control, either individually or jointly with another or others, of the payment of the wages. For purposes of this section, "employer" does not mean a person reporting less than \$100,000 in gross receipts in the preceding calendar year.

(5) **Number of withholding exemptions claimed.** For purposes of this section, the term "number of withholding exemptions claimed" means the number of withholding

5.1 exemptions claimed in a withholding exemption certificate in effect under subdivision
5.2 5, except that if no such certificate is in effect, the number of withholding exemptions
5.3 claimed shall be considered to be zero.

5.4 Sec. 5. Minnesota Statutes 2014, section 322C.0201, is amended by adding a
5.5 subdivision to read:

5.6 Subd. 5. **Exception; fees.** (a) Articles of organization that attest that the limited
5.7 liability company anticipates earning less than \$100,000 in gross annual receipts in the
5.8 first year of operation shall require a fee of \$10 to file with the secretary of state.

5.9 (b) An organizer can only use the reduced filing fee described in paragraph (a) to
5.10 organize a single limited liability company.

5.11 Sec. 6. Minnesota Statutes 2014, section 333.055, is amended by adding a subdivision
5.12 to read:

5.13 Subd. 3a. **Exception; fees.** (a) The secretary of state shall charge and collect a
5.14 fee of \$10 for the initial filing of a certificate of assumed name where the filing attests
5.15 that the person using the assumed name anticipates earning less than \$100,000 in gross
5.16 annual receipts in the first year of operation.

5.17 (b) A person can only use the reduced filing fee described in paragraph (a) to file a
5.18 single certificate of assumed name.