

repair and that the rest are in desperate need of repair and restoration and since it is now possible under a certain process to restore and preserve such flags, it is hereby declared by the legislature that the repair, restoration, and preservation of these regimental flags, standards, and guidons is the patriotic duty of the government of this state.

Sec. 2. [Subd. 2.] Notwithstanding the provisions of Minnesota Statutes 1961, Chapters 16 and 43, to the contrary, the adjutant general of the state of Minnesota is authorized to contract for the repair restoration, and preservation of such regimental battle flags, standards, and guidons with persons or corporations skilled in such repair, restoration, and preservation, upon such terms or conditions as he may deem proper, subject to the approval of the commissioner of administration of the state of Minnesota; or, if he deems it best in order to accomplish such repair, restoration, and preservation, the adjutant general, with the approval of the commissioner of administration, may employ a person or persons who are skilled and proficient in the repair, restoration, and preservation of such regimental battle flags, standards, and guidons upon such terms and conditions as he, with the approval of the commissioner of administration, may deem proper. Such person or persons so employed shall be in the unclassified service of the state civil service.

Sec. 3. [Subd. 3.] Notwithstanding the provisions of Minnesota Statutes, Section 190.09, the adjutant general may, for the purposes of this act, surrender the immediate custody and control of such regimental battle flags, standards, and guidons under such conditions and safeguards as he may deem necessary and proper, for such time as is reasonably necessary for their restoration, after which they shall at once be again properly displayed.

Sec. 4. **Appropriation.** There is hereby appropriated the sum of \$15,000 from the general revenue fund in the state treasury to the adjutant general of the state of Minnesota for the purpose of carrying out the provisions of Sections 1 to 3 of this act.

Approved May 13, 1963.

CHAPTER 666—S. F. No. 1322

An act relating to taxes on and measured by net income; amending Minnesota Statutes 1961, Section 290.92, Subdivisions 1 and 6.

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

Changes or additions indicated by italics, deletions by ~~strikeout~~.

Section 1. Minnesota Statutes 1961, Section 290.92, Subdivision 1, is amended to read:

290.92 **Income tax; tax withheld at source upon wages.** Subdivision 1. **Definitions.** (1) **Wages.** For purposes of this section, the term "wages" means all remuneration, other than fees paid to a public official for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid

(a) For active service as a member of the armed forces of the United States, or

(b) For agricultural labor, as defined in section 312 (g) of the Internal Revenue Code of 1954, or

(c) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, or

(d) For services not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day, service not in the course of the employer's trade or business, or,

(ii) Such individual was regularly employed (as determined under (i)) by such employer in the performance of such service during the preceding calendar quarter, or,

(e) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, or,

(f) (i) For services performed by an individual under the age 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or

(ii) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based

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on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back, or

(g) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash, or

(h) To, or on behalf of, an employee or his beneficiary, from or to a trust described in Minnesota Statutes, Section 290.26, which is exempt from tax under Minnesota Statutes, Section 290.05, at the time of such payment, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or under or to an annuity plan which, at the time of such payment, meets the requirements of Minnesota Statutes, Section 290.26;

(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 his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, bi-weekly, semi-monthly, monthly, quarterly, semi-annual, 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, territory, 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, 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 *legal* control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having *legal* control of the payment of such

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wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under Minnesota Statutes, Section 290.05 and further includes, but is not limited to, officers of corporations who have legal control, either individually or jointly with another or others, of the payment of wages.

(5) **Number of withholding exemptions claimed.** For purposes of this section, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under subdivision 5, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

Sec. 2. Minnesota Statutes 1961, Section 290.92, Subdivision 6, is amended to read:

Subd. 6. **Employer to furnish information.** (1) Every employer required to deduct and withhold tax under subdivision 2 or subdivision 3 shall (a) for the period beginning October 1, 1961 and ending December 31, 1961, file with the commissioner of taxation, on or before January 31, 1962, and pay over the tax required to be withheld under subdivision 2 and subdivision 3, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period make and file with the commissioner a return and pay over to him the tax required to be withheld under subdivision 2 or subdivision 3, except that, if during any calendar month, other than the last month of the calendar quarter, the aggregate amount of the tax withheld under subdivision 2 or subdivision 3 exceeds \$25, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with the commissioner of taxation. However, any such return may be filed on or before the tenth day of the second calendar month following such period if such return is accompanied by depository receipts showing timely deposits in full payment of such taxes due for such period. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period, may be made on or before the last day of the first calendar month following the close of such period. The commissioner shall upon receipt of such deposit issue to the employer a depository receipt in duplicate evidencing such deposit. Every employer making monthly deposits pursuant to this subdivision shall attach to his return for the period with respect to which such deposits are made, depository receipts evidencing deposits made for such period and shall pay to the commissioner of taxation the balance, if any, of the taxes due for such period. If the aggregate amount of the taxes deposited as shown on the depository receipt or receipts attached to such return

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is in excess of the taxes shown on such return, a credit or refund may be obtained in accordance with regulations to be prescribed by the commissioner of taxation.

Such return shall be in such form and contain such information as the commissioner may by regulations prescribe. The commissioner may grant a reasonable extension of time for making such return or deposit and paying such tax, but no such extension shall be granted for more than six months.

(2) If less than the correct amount of such tax is paid to the commissioner, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the commissioner may by regulations prescribe. If such underpayment cannot be so adjusted the amount of the underpayment shall be assessed and collected in such manner and at such times as the commissioner may by regulations prescribe.

(3) If any employer fails to make and file any return required by paragraph (1) at the time prescribed therefor, or makes and files a false or fraudulent return, the commissioner shall make for him a return from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof. The amount of tax shown thereon shall be paid to the commissioner at such times as the commissioner may by regulations prescribe. Any such return or assessment so made by the commissioner shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(4) If the commissioner, in any case, has reason to believe that the collection of the tax provided for in paragraph (1) of this subdivision, and any added penalties and interest, if any, will be jeopardized by delay, he may immediately assess such tax, whether or not the time otherwise prescribed by law for making and filing the return and paying such tax has expired.

(5) Any assessment under this subdivision shall be made by recording the liability of the employer in the office of the commissioner in accordance with regulations prescribed by the commissioner. Upon request of the employer, the commissioner shall furnish the employer a copy of the record of assessment.

(6) Any assessment of tax under this subdivision shall be made within three and one-half years after the due date of the return required by paragraph (1), or the date the return was filed,

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whichever is later; except that in the case of a false or fraudulent return or failure to file a return, the tax may be assessed at any time.

(7) (a) Except as provided in (b) of this paragraph, every employer who fails to pay to or deposit with the commissioner any sum or sums required by this section to be deducted, withheld and paid, shall be personally and individually liable to the state of Minnesota for such sum or sums (and any added penalties and interest); and any sum or sums deducted and withheld in accordance with the provisions of subdivision 2 or subdivision 3 shall be held to be a special fund in trust for the state of Minnesota.

(b) If the employer, in violation of the provision of this section, fails to deduct and withhold the tax under this section, and thereafter the taxes against which such tax may be credited are paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this shall in no case relieve the employer from liability for any penalties and interest otherwise applicable in respect of such failure to deduct and withhold.

(8) Upon the failure of any employer to pay to or deposit with the commissioner within the time provided by paragraphs (1), (2) or (3) of this subdivision any tax required to be withheld in accordance with the provisions of subdivision 2 or subdivision 3, or if the commissioner has assessed a tax pursuant to paragraph (4), such tax shall become immediately due and payable, and the commissioner may deliver to the attorney general a certified statement of the tax, penalties and interest due from such employer. The statement shall also give the address of the employer owing such tax, the period for which the tax is due, the date of the delinquency, and such other information as may be required by the attorney general. It shall be the duty of the attorney general to institute legal action in the name of the state to recover the amount of such tax, penalties, interest and costs. The commissioner's certified statement to the attorney general shall for all purposes and in all courts be prima facie evidence of the facts therein stated and that the amount shown therein is due from the employer named in the statement. In event action is instituted as herein provided, the court shall, upon application of the attorney general, appoint a receiver of the property and business of the delinquent employer for the purpose of impounding the same as security for any judgment which has been or may be recovered. Any such action shall be brought within four years and three months after the due date of the return or deposit required by paragraph (1), or the date the return was filed, or deposit made whichever is later; except that in the case of failure to make and file such return or if such return is false or fraudulent, or such deposit is not made such action may be brought at any time.

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(9) The tax required to be withheld under subdivision 2 or subdivision 3 or paid to, or deposited with the commissioner under subdivision 6, together with penalties, interest and costs, shall become a lien upon all of the real property of the employer within this state, except his homestead, from and after the filing by the commissioner of a notice of such lien in the offices of the register of deeds of the county in which such real property is situated.

(10) Either party to an action for the recovery of any tax, interest or penalties under this subdivision may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

(11) No suit shall lie to enjoin the assessment or collection of any tax imposed by this section, or the interest and penalties added thereto.

(12) When any tax is due and payable as provided in paragraph (8) the commissioner may issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer within the county and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the employer within his county, except the homestead and household goods of the employer, and shall sell so much thereof as is required to satisfy such taxes, interest, and penalties, together with his costs; but such sales shall, as to their manner, be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain such part thereof as is required to satisfy the tax, interest, penalties and costs, and pay over any balance to the taxpayer. Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy providing for the collection of taxes required to be withheld by employers.

Approved May 13, 1963.

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