

other powers and rights pertaining to such street or streets as it has heretofore had.

Sec. 6. **TAX EXEMPTION.** Mall structure pedestrian concourses and public parking structures developed pursuant to this act are public property to be used for essential public and governmental purposes and are exempt from all taxes and special assessments of city, county, state, or any political subdivision thereof. For purposes of this section, "taxes and special assessments" do not include charges for utilities and special services such as heat, water, electricity, gas, sewage or garbage removal. Any space within the mall area leased to private individuals or corporations shall be subject to taxation in the same manner as any other individual or corporation leasing property.

Sec. 7. **ADVISORY BOARD.** The city council may create an advisory board consisting of seven persons to advise the city council and the city manager on the implementation of the operation and maintenance of the mall. A majority of the members of any board so created shall be owners or occupants of property located in the mall or prospective mall.

Sec. 8. **EFFECTIVE DATE.** This act is effective upon its approval by the governing body of the city of Mankato, and upon compliance with Minnesota Statutes, Section 645.021.

Approved April 2, 1973.

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## CHAPTER 73—S.F.No.758

*An act relating to taxes on and measured by net income; references in withholding requirements; amending Minnesota Statutes 1971, Section 290.92, Subdivisions 6, 7, 8, 9, 11, 12, 13 and 15.*

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

Section 1. Minnesota Statutes 1971, Section 290.92, Subdivision 6, is amended to read:

Subd. 6. **TAXATION; INCOME TAX; WITHHOLDING; EMPLOYER TO FURNISH INFORMATION.** (1) Every employer required to deduct and withhold tax under subdivision 2 a or subdivision 3 shall file with the commissioner of taxation, and pay over the tax required to be withheld under subdivision 2 a and

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subdivision 3 for each quarterly period, on or before the last day of the month following the close of each quarterly period and make and file with the commissioner a return and pay over to him the tax required to be withheld under subdivision 2 a 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 a or subdivision 3 exceeds \$100, 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 shows 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. Every employer, in preparing said quarterly return, shall take credit for monthly deposits previously made in accordance with this subdivision.

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

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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, 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 a 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 a 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

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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.

(9) The tax required to be withheld under subdivision 2 a 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 and to levy upon the rights to 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 and to levy upon the rights to property of the employer within his county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of Minnesota Statutes 1961, Section 550.37, and acts amendatory thereof, 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

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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.

Sec. 2. Minnesota Statutes 1971, Section 290.92, Subdivision 7, is amended to read:

Subd. 7. **WITHHOLDING STATEMENT TO EMPLOYEE AND TO COMMISSIONER.** (1) Every person required to deduct and withhold from an employee a tax under subdivision 2 a or subdivision 3, or who would have been required to deduct and withhold a tax under subdivision 2 a or subdivision 3, determined without regard to subdivision 19, if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(a) Name of such person,

(b) The name of the employee and his social security account number,

(c) The total amount of wages as that term is defined in subdivision 1(1),

(d) The total amount deducted and withheld as tax under subdivision 2 a or subdivision 3.

(2) The statement required to be furnished by this subdivision in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the commissioner may ~~by regulations~~ prescribe.

(3) The commissioner may prescribe regulations providing for reasonable extensions of time, not in excess of 30 days, to employers required to furnish such statements to their employees under this subdivision.

(4) A duplicate of any statement made pursuant to this subdivision and in accordance with regulations prescribed by the commissioner shall be filed with the commissioner at such time as he may by regulations prescribe. Such duplicate when so filed shall constitute the information return required to be made in respect of wages, salaries and commissions under section 290.41, subdivision 2.

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Sec. 3. Minnesota Statutes 1971, Section 290.92, Subdivision 8, is amended to read:

Subd. 8. **EMPLOYER LIABLE FOR TAX WITHHELD.** The employer shall be liable for the payment of the tax required to be deducted and withheld under subdivision 2 a or subdivision 3, and shall not be liable to any person for the amount of any such payment.

Sec. 4. Minnesota Statutes 1971, Section 290.92, Subdivision 9, is amended to read:

Subd. 9. **DETERMINATION OF TAX DUE.** The commissioner may grant permission to employers, who do not desire to use the withholding tax tables provided in accordance with paragraph (3) of subdivision 2 a, to determine the amount of tax to be withheld by use of a method of withholding other than withholding tax tables, provided such method will withhold from each employee substantially the same amount of tax as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the commissioner before the beginning of a payroll period for which the employer desires to withhold the tax by such other method. Applications to use such other method must be accompanied by evidence establishing the need for the use of such method.

Sec. 5. Minnesota Statutes 1971, Section 290.92, Subdivision 11, is amended to read:

Subd. 11. **REFUNDS.** Where there has been an overpayment of tax imposed by this section, refund of such overpayment or credit shall be made to the employer in accordance with regulations prescribed by the commissioner, but only to the extent that the amount of such overpayment was not deducted and withheld under subdivision 2 a or subdivision 3 by the employer. Any overpayment which is refunded shall bear interest at the rate of six percent per annum, computed from the date of payment until the date the refund is paid to the employer. The state auditor shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62 and so much of said fund as may be necessary is hereby appropriated for that purpose. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

Sec. 6. Minnesota Statutes 1971, Section 290.92, Subdivision 12, is amended to read:

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Subd. 12. **WITHHELD AMOUNT, CREDIT AGAINST TAX.** The amount deducted and withheld as tax under subdivision 2 a or subdivision 3 during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the taxes imposed by Minnesota Statutes, Chapter 290, for a taxable year beginning in such calendar year. If more than one taxable year begins in such calendar year, such amount shall be allowed as a credit against the taxes for the last taxable year so beginning.

Sec. 7. Minnesota Statutes 1971, Section 290.92, Subdivision 13, is amended to read:

Subd. 13. **REFUNDS.** (1) Where the amount of the tax withheld at the source under subdivision 2 a or subdivision 3 exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the employee taxpayer or imposed upon him by chapter 290, the amount of such excess shall be refunded to the employee taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to refund in accordance with the provisions of Extra Session Laws 1959, Chapter 57, Section 13. Where any amount of such excess to be refunded exceeds \$10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the employee taxpayer or (b) the date on which his return is filed, whichever is later, to the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the employee taxpayer within the purview of section 290.46.

(3) The state auditor shall cause any such refund of tax and interest, to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Sec. 8. Minnesota Statutes 1971, Section 290.92, Subdivision 15, is amended to read:

Subd. 15. **PENALTIES.** (1) If any tax required to be deducted and withheld under subdivision 2 a or subdivision 3, or any portion thereof, is not paid to or deposited with the commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to five percent of the

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amount so remaining unpaid. 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 percent per annum from the time such tax should have been paid or deposited until paid. Where an extension of time for payment has been granted under the provisions of subdivision 6, interest shall be paid at the rate of six percent per annum from the date when such payment or deposit 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 subdivision shall apply.

(2) In the case of any failure to withhold a tax on wages, make and file quarterly returns or make payments to or deposits with the commissioner of amounts withheld, as required by this section, within the time prescribed by law, unless it is shown that such failure is not due to wilful neglect, there shall be added to the tax in lieu of the five percent penalty provided in paragraph (1) a penalty equal to 25 percent of the amount of tax that should have been properly withheld and paid over to or deposited with the commissioner. The amount so added to the tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(3) If any employer required to withhold a tax on wages, make deposits, make and file quarterly returns and make payments to the commissioner of amounts withheld, as required by sections 290.92 to 290.97, wilfully fails to withhold such a tax or make such deposits, files a false or fraudulent return, wilfully fails to make such a payment or deposit, or wilfully attempts in any manner to evade or defeat any such tax or the payment or deposit thereof, there shall also be imposed on such employer as a penalty an amount equal to 50 percent of the amount of tax (less any amount paid or deposited by such employer on the basis of such false or fraudulent return or deposit) that should have been properly withheld and paid over or deposited with the commissioner. The penalty imposed by this paragraph shall be collected as a part of the tax, and shall be in addition to any other penalties civil and criminal, prescribed by this subdivision.

(4) If any person required under the provisions of subdivision 7 to furnish a statement to an employee and a duplicate statement to the commissioner, wilfully furnishes a false or fraudulent statement to an employee or a false or fraudulent duplicate statement to the commissioner, or wilfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or regulations prescribed by the commissioner thereunder, there shall be imposed on such a person a

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penalty of \$10 for each such act or failure to act. The penalty imposed by this paragraph shall become due and payable within ten days after the mailing of a written demand therefor, and may be collected in the manner prescribed in subdivision 6(8).

(5) In addition to the penalties hereinbefore prescribed, any person required to withhold a tax on wages, make and file quarterly returns and make payments or deposits to the commissioner of amounts withheld, as required by this section, who wilfully fails to withhold such a tax or truthfully make and file such a quarterly return or make such a payment or deposit, shall be guilty of a gross misdemeanor.

(6) In lieu of any other penalty provided by law, except the penalty provided by paragraph (4), any person required under the provisions of subdivision 7 to furnish a statement to an employee and a duplicate statement to the commissioner, who wilfully furnishes a false or fraudulent statement to an employee or a false or fraudulent duplicate statement to the commissioner, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or regulations prescribed by the commissioner thereunder, shall be guilty of a gross misdemeanor.

(7) Any employee required to supply information to his employer under the provisions of subdivision 5, who wilfully fails to supply information thereunder which would require an increase in the tax to be deducted and withheld under subdivision 2 a or subdivision 3, shall be guilty of a misdemeanor.

(8) The term "person," as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

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

(10) The commissioner shall have power to abate any civil penalties prescribed in this subdivision 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 if the abatement exceeds \$500.

Sec. 9. This act is effective upon final enactment.

Approved April 2, 1973.

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