

construction program; (b) \$100,000 to Duluth Day Activity Center, Inc., Duluth, Minnesota, for the purpose of acquiring suitable sites and constructing necessary buildings for a Day Activity Center for the mentally retarded and for equipping and maintaining same, with the balance of the money remaining resulting from such transfer to be appropriated and expended by the board of county commissioners for like projects.

Sec. 2. This act shall take effect upon its approval by the board of county commissioners of the county of St. Louis and upon compliance with the provisions of Minnesota Statutes, Section 645.021.

Approved May 9, 1969.

CHAPTER 325—S. F. No. 1288

[Coded in Part]

An act relating to taxes on and measured by net income and interest rate and overpayment of estimated tax by corporations; amending Minnesota Statutes 1967, Sections 290.0611, Subdivisions 2 and 3; 290.45, Subdivision 2; 290.50, Subdivision 1; 290.53, Subdivisions 1 and 2; 290.92, Subdivisions 11, 13 and 15; 290.93, Subdivision 9; and Chapter 290 by adding a new section.

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

Section 1. Minnesota Statutes 1967, Section 290.0611, Subdivision 2, is amended to read:

Subd. 2. **Income tax; corporations; interest rate and overpayment; fraudulent claim.** In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be cancelled and the amount paid may be recovered by assessment as income taxes are assessed. A penalty of 25 percent shall be imposed and such assessment shall bear interest from the due date of the return, until refunded or paid, at the rate of ~~four~~ six percent per annum. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor.

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Sec. 2. Minnesota Statutes 1967, Section 290.0611, Subdivision 3, is amended to read:

Subd. 3. **Excessive or negligent claim.** In any case in which it is determined that a claim is or was excessive, a ten percent penalty shall be imposed on such excess and if the claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or cancelled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at ~~four~~ *six* percent per annum from the date of payment until refunded or paid.

Sec. 3. Minnesota Statutes 1967, Section 290.45, Subdivision 2, is amended to read:

Subd. 2. **Extensions.** (A) At the request of the taxpayer, and for good cause shown, the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid together with interest at the rate of ~~four~~ *six* percent per annum on or before the date of the expiration of the period of the extension.

(B) When any portion of the tax as reported by the taxpayer together with interest and penalty thereon, if any, has not been paid six months from the date prescribed by law for the payment thereof, or *within six months after the passage of this act, whichever is the later*, the commissioner may extend the time for payment thereof for a further period not to exceed 30 months. When the authority of this paragraph (B) is invoked, the extension shall be evidenced by written agreement signed by the taxpayer and the commissioner, stating the amount of such tax with penalty and interest, if any, and providing for the payment of such amount in regular weekly, semi-monthly or monthly installments, which agreement shall contain a confession of judgment for such amount and for any unpaid portion thereof and providing that the commissioner may forthwith enter judgment against the taxpayer in the district court of the county of his residence as shown upon his tax return for the unpaid portion of the amount specified in said extension agreement. The principal sum specified in said agreement shall bear interest at the rate of *six* percent per annum on all unpaid portions thereof until the same has been fully paid or the unpaid portion thereof has been entered as a judgment, which judgment shall bear interest at the rate of *six* percent per annum. If it shall appear to the satisfaction of the commissioner that the tax re-

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ported by the taxpayer is in excess of the amount actually owing by the taxpayer, the extension agreement or the judgment entered pursuant thereto shall be so corrected. If after making such extension agreement or entering judgment with respect thereto, the commissioner shall determine that the tax as reported by the taxpayer is less than the amount actually due, the commissioner shall assess such further tax in accordance with the provisions of Minnesota Statutes, Chapter 290. The authority granted to the commissioner by this paragraph (B) is in addition to any other authority granted to the commissioner by law to extend the time of payment or the time for filing a return and shall not be construed in limitation thereof.

Sec. 4. Minnesota Statutes 1967, Section 290.50, Subdivision 1, is amended to read:

290.50 Overpayments, claims for refund. Subdivision 1. **Procedure, time limit.** A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in section 290.48, subdivisions 1 and 5) an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. Except as provided in subdivision 4 no such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer; except that if the claim relates to taxable years beginning after December 31, 1942, and ending before December 31, 1946, such claim will not be entertained unless filed within two years after such tax was paid or collected or within four and one-half years from the filing of the return whichever period is the longer. If the claim relates to an overpayment on account of failure to deduct a loss due to a bad debt or to a security becoming worthless, the period shall be five years from the date the return was filed, and in such case the refund shall be limited to the amount of such overpayment; but no claim for any year ending prior to January 1, 1939, shall be allowed, unless (1) the deduction was claimed by the taxpayer with respect to a subsequent year, and disallowed by the commissioner of taxation prior to January 1, 1943, and (2) the claim is filed before December 1, 1943. If the claim is not filed within three and one-half years after the return is filed, (four and one-half years if the return covers a taxable period beginning after December 31, 1942, and ending before December 31, 1946), or, to the extent that it refers to bad debts or worthless stock losses, within five years after the return is filed, the refund shall not exceed the amount paid within two years prior to the filing of the claim. Upon the filing of a claim the commissioner shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in

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part and shall mail a notice thereof to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of ~~two~~ *six* percent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, however, where the only basis for refund is the carry-back of a net operating loss interest shall be computed from the end of the taxable year in which the net operating loss occurs to the date the refund is paid and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this act, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

Sec. 5. Minnesota Statutes 1967, Section 290.53, Subdivision 1, is amended to read:

290.53 Penalties, interest. Subdivision 1. Failure to pay tax. If any tax imposed by this act, or any portion thereof, is not paid within the time herein specified for the payment thereof, or within 30 days after final determination of an appeal to the tax court relating thereto, there shall be added thereto a specific penalty equal to five percent of the 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 ~~four~~ *six* percent per annum from the time such tax should have been paid until paid. Interest accruing upon the tax due as disclosed by the return or upon the amount determined as a deficiency from the date prescribed for the payment of the tax (if the tax is payable in installments, from the date the installment or installments become due and payable under the provisions of section 290.45, subdivision 1) shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under section 290.45, subdivision 2, interest shall be paid at the rate of ~~four~~ *six* percent per annum from the date when such payment 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 section shall apply.

Sec. 6. Minnesota Statutes 1967, Section 290.53, Subdivision 2, is amended to read:

Subd. 2. Failure to make and file return, not due to wilful neglect. In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law, unless it is shown that such failure

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is not due to wilful neglect, there shall be added to the tax in lieu of the five percent specific penalty provided in subdivision 1: five percent if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, and the amount of said tax together with the amount so added shall bear interest at the rate of ~~four~~ six percent per annum from the time such tax should have been paid until paid unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

For the purposes of this subdivision the amount of any taxes required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

Sec. 7. Minnesota Statutes 1967, 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 or subdivision 3 by the employer. Any overpayment which is refunded shall bear interest at the rate of ~~two~~ 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 income tax school fund in accordance with the provisions of Minnesota Statutes, Section 290.62 and so much of said fund as may be necessary is hereby appropriated for that purpose. Notwithstanding the provisions of Minnesota Statutes, 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 Minnesota Statutes, Section 270.10, shall not be applicable.

Sec. 8. Minnesota Statutes 1967, 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 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

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by Minnesota Statutes, 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 ~~two~~ *six* percent per annum, computed from 90 days after the due date of the return of the employee taxpayer or 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 Minnesota Statutes, 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 Minnesota Statutes, 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 Minnesota Statutes, Section 290.46.

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

Sec. 9. Minnesota Statutes 1967, 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 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 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 ~~four~~ *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 ~~four~~ *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,

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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 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

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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 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.

Sec. 10. Minnesota Statutes 1967, Section 290.93, Subdivision 9, is amended to read:

Subd. 9. **Overpayment of estimated tax.** (1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments plus (1) the total amount of tax withheld at the source under section 290.92, subdivision 2 or subdivision 3 (if any) and (2) and other payments (if any) exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by Minnesota Statutes, Chapter 290, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to re-

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fund 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 ~~two~~ *six* percent per annum, computed from 90 days after the due date of the return of the taxpayer or the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of Minnesota Statutes, 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 Minnesota Statutes, 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 taxpayer within the purview of Minnesota Statutes, Section 290.46.

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

Sec. 11. Minnesota Statutes 1967, Chapter 290, is amended by adding a new section to read:

[290.936] Overpayment of estimated tax. *(1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments and other payments, if any, exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by Minnesota Statutes, Chapter 290, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1, the commissioner shall not be required to refund. 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 the due date of the return of the taxpayer or the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of Minnesota Statutes, 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 Minnesota Statutes, Section 270.10, shall not be applicable.*

(2) Any action of the commissioner in refunding the amount

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of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of Minnesota Statutes, Section 290.46.

(3) *The state auditor shall cause any such refund of tax and interest to be paid out of the income tax school fund in accordance with the provisions of Minnesota Statutes, Sections 290.361 and 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.*

Approved May 9, 1969.

CHAPTER 326—S. F. No. 1300

An act relating to taxes on and measured by net income; amending Minnesota Statutes 1967, Section 290.92, Subdivision 6.

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

Section 1. Minnesota Statutes 1967, Section 290.92, Subdivision 6, is amended to read:

Subd. 6. **Income tax; withholding; returns; 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~~ *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. ~~The commissioner shall~~

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