

*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.

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#### 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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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 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. *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 or not the time otherwise prescribed by law for making and filing the return and paying such tax has expired.

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(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 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

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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 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

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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 9, 1969.

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CHAPTER 327—H. F. No. 664

[Coded in Part]

*An act relating to wild animals; amending certain provisions concerning the taking of fish by angling with set or unattended lines; amending Minnesota Statutes 1967, Section 101.42, Subdivision 11, and adding a subdivision thereto.*

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

Section 1. Minnesota Statutes 1967, Section 101.42, Subdivision 11, is amended to read:

Subd. 11. **Fishing; set lines.** Except as otherwise specifically permitted, it shall be unlawful to take fish by means of explosives, drugs, poisons, lime, medicated bait, fish berries, or other deleterious substances, or by nets, traps, tip-ups, trot lines, ~~set lines~~, wires, springs, ropes or cables, except as expressly authorized. Possession of any such substances or contrivances by any persons on any waters of this state, their shores or islands, shall be presumptive evidence that the same are possessed in violation of this provision; ~~provided, a line with a single hook, used for angling through the ice, shall not be deemed a set line if the owner of the line is within sight of the line.~~

Sec. 2. Minnesota Statutes 1967, Section 101.42, is amended by adding a subdivision to read:

*Subd. 20. It shall be unlawful to take fish by angling with a set or unattended line except that a line with a single hook attached,*

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