

Sec. 5. This act is effective January 1, 1974.

Approved March 30, 1973.

CHAPTER 65—S.F.No.403

An act relating to manpower services; unemployment compensation; defining employment; exceptions; amending Minnesota Statutes 1971, Section 268.04, Subdivision 12.

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

Section 1. Minnesota Statutes 1971, Section 268.04, Subdivision 12, is amended to read:

Subd. 12. **UNEMPLOYMENT COMPENSATION; EMPLOYMENT DEFINED.** "Employment" means: (1) Subject to the other provisions of this subdivision "employment" means service performed prior to January 1, 1945, which was employment as defined in this section prior to such date, and any service performed after December 31, 1944, including service in interstate commerce, by an individual who is a servant under the law of master and servant or who performs services for any employing unit, unless such services are performed by an independent contractor. Any service performed, including service in interstate commerce, by

(a) any officer of a corporation; or

(b) any individual other than an individual who is an employee under clause (a) who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal, or as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a fulltime basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

Provided, that for purposes of clause (1)(b), the term "employment" shall include services described above performed after De-

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

ember 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual, the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation), and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) After December 31, 1971, the term "employment" shall include an individual's service wherever performed within the United States, the Virgin Islands or Canada, if

(a) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(b) The place from which the service is directed or controlled is in this state.

(5)(a) Service covered by an election pursuant to section 268.11, subdivision 3; and

(b) Service covered by an arrangement pursuant to section 268.13 between the commissioner and the agency charged with the *administration of any other state or federal employment security law*, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the commissioner has approved an election of the employing unit for which such service is performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

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

(6) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, the term "employment" shall include any services which are performed by an individual with respect to which an employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this law.

(7) Service performed after July 1, 1957, by an individual for the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota or in the employ of this state and one or more other states or their instrumentalities.

(8) Service performed after July 1, 1957, by an individual for any political subdivision of the state of Minnesota or instrumentality thereof which elects to be an employer with respect to one or more of its departments under the Minnesota manpower services law and notifies the department of manpower services of such election.

(a) Notwithstanding the provisions of the foregoing clause (8), any political subdivision of this state may elect to cover under this law service performed by employees in all of the institutions of higher learning and hospitals, as defined in clauses (15) and (16), operated by such political subdivision. Election is to be made by filing with the commissioner a notice of such election at least 30 days prior to the effective date of such election. The election may exclude any services described in clause (10). Any political subdivision electing coverage under this subdivision shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 268.06, subdivision 25.

(b) The provisions of section 268.08, subdivision 5, shall apply to service covered by an election under this section.

(c) The amounts required to be paid in lieu of contributions by any political subdivision shall be billed and payment made as provided in section 268.06, subdivision 28, clause (2), with respect to similar payments by nonprofit organizations.

(d) An election under this section may be terminated, by filing with the commissioner written notice not later than 30 days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

(9) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met;

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

(a) the service is excluded from "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c) (8) of that act; and

(b) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(10) For the purposes of clauses (7), (8), and (9), the term "employment" does not apply to service performed

(a) in the employ of a church or convention or association of churches, or an organization which is operated exclusively for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) 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

(c) in the employ of a school which is not an institution of higher education; or

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(e) as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(f) for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(11) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of clauses (2), (3), or (4) or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

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

(b) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of (a) and (b) of this clause is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(d) An "American employer," for the purposes of this subdivision, means a person who is an individual who is a resident of the United States, or a partnership if two thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state;

(e) As used in this subdivision, the term "United States" includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) Notwithstanding clause (1), all service performed after the effective date of this subdivision by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(13) The term "employment" shall not include:

(a) Agricultural labor. The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

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

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, as amended (46 Stat. 1550, sec. 3; 12 U.S.C. 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed, or in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described herein, but only if such operators produced more than one half of the commodity with respect to which such service is performed; however, the provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used herein, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Casual labor not in the course of the employing unit's trade or business;

(d) Service performed on the navigable waters of the United States as to which this state is prohibited by the constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in sections 268.03 to 268.24;

(e) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

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

(f) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by sections 268.03 to 268.24, except that with respect to such service performed subsequent to December 31, 1939, and to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act; then, to the extent permitted by congress, and from and after the date as of which such permission becomes effective, all of the provisions of these sections shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the United States department of labor under section 3304(c) of the federal internal revenue code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 268.16, subdivision 6, with respect to contributions erroneously collected;

(g) Service performed in the employ of any political subdivision of this state and or any instrumentality thereof which has not elected to be an employer with respect to one or more of its departments under the Minnesota manpower services law prior to January 1, 1972;

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(i)(1) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or section 521 of the federal internal revenue code, if the remuneration for such service is less than \$50; or

(2) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university; or

(3) Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a fulltime program, taken for credit at such institution, which

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

combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(j) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(k) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The commissioner finds that the United States secretary of state has certified to the United States secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

(l) Service covered by an arrangement between the commissioner and the agency charged with the administration of any other state or federal employment security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state;

(m) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in clause (16);

(n) Service performed subsequent to December 31, 1940, as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered and approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered and approved pursuant to state law;

(o) Service performed subsequent to December 31, 1940, by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission (the word "insurance" as used in this subdivision shall include an annuity and an optional annuity);

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

(p) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(q) Service performed by an individual for a person as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

~~(q)~~ (r) If the service performed subsequent to December 31, 1940, during one half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subdivision, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment or remuneration is ordinarily made to the individual by the person employing him.

(14) Except when performed for an institution of higher education, as defined in clause (15), or a hospital, as defined in clause (16), the term "employment" as applied to services performed by an individual for the state of Minnesota or any instrumentality wholly owned by the state, except political subdivisions or instrumentalities thereof which duly elect otherwise, shall not include the following:

(a) Service performed by elected public officials and unclassified employees appointed for a definite term, except after December 31, 1971, this exclusion shall not apply to service performed by unclassified employees in an instructional, research, or principal administrative capacity in an institution of higher education or a hospital;

(b) Service performed prior to January 1, 1972, by a faculty member in the employ of a university, college, school or any other institution which is supported wholly or substantially by public funds;

(c) Service performed by members of the Minnesota national guard when ordered to duty for military assignments;

(d) Service performed in the employ of the state natural resources department directly and solely in connection with emergency fire fighting, including but not limited to those persons temporarily employed for the purpose of detecting, locating, or suppressing forest fires.

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

(15) "Institution of higher education," for the purposes of this subdivision, means an educational institution which:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(e) Notwithstanding any of the foregoing provisions of this clause, all colleges and universities in this state are institutions of higher education for purposes of this section.

(16) "Hospital" means an institution which has been licensed, certified or approved by the department of health as a hospital.

Approved March 30, 1973.

CHAPTER 66—S.F.No.666

An act relating to taxes on and measured by net income; confidentiality of returns; amending Minnesota Statutes 1971, Section 290.611.

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

Section 1. Minnesota Statutes 1971, Section 290.611, is amended to read:

290.611 TAXATION; INCOME TAX; DISCLOSURE OF CONTENTS OF TAX RETURNS PROHIBITED IN CERTAIN INSTANCES; PENALTY. Subdivision 1. No person who prepares, aids in the preparation, processes, consults with respect to or reviews a state or federal tax return for another person, corporation, partnership, association or other taxpayer shall divulge any particulars of such return, except to authorized employees of the

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