

CHAPTER 295

COMPANIES SUBJECT TO GROSS EARNINGS TAXES

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295.44 HYDROPOWER FACILITIES; EXEMPTION; TAXATION IN LIEU OF PROPERTY TAXATION.

Subdivision 1. **Exemption.** Notwithstanding the provisions of sections 272.01, subdivision 2, 272.02, subdivision 5, and 273.19, subdivision 1, real or personal property used or to be used primarily for the production of hydroelectric or hydromechanical power on a site owned by the federal government, the state, or a local governmental unit and developed and operated pursuant to section 103G.535 may be exempt from property taxation for all years during which the site is developed and operated under the terms of a lease or agreement authorized by section 103G.535.

History: 1997 c 191 art 1 s 10

295.50 DEFINITIONS.

[For text of subs 1 to 2a, see M.S.1996]

Subd. 3. **Gross revenues.** "Gross revenues" are total amounts received in money or otherwise by:

- (1) a hospital for patient services;
- (2) a surgical center for patient services;
- (3) a health care provider, other than a staff model health carrier, for patient services;
- (4) a wholesale drug distributor for sale or distribution of legend drugs that are delivered in Minnesota by the wholesale drug distributor, by common carrier, or by mail, unless the legend drugs are delivered to another wholesale drug distributor who sells legend drugs exclusively at wholesale. Legend drugs do not include nutritional products as defined in Minnesota Rules, part 9505.0325; and
- (5) a staff model health plan company as gross premiums for enrollees, copayments, deductibles, coinsurance, and fees for patient services covered under its contracts with groups and enrollees.

Subd. 4. **Health care provider.** (a) "Health care provider" means:

- (1) a person whose health care occupation is regulated or required to be regulated by the state of Minnesota furnishing any or all of the following goods or services directly to a patient or consumer: medical, surgical, optical, visual, dental, hearing, nursing services, drugs, laboratory, diagnostic or therapeutic services;
- (2) a person who provides goods and services not listed in clause (1) that qualify for reimbursement under the medical assistance program provided under chapter 256B;
- (3) a staff model health plan company;
- (4) an ambulance service required to be licensed; or
- (5) a person who sells or repairs hearing aids and related equipment or prescription eyewear.

(b) Health care provider does not include hospitals; medical supplies distributors, except as specified under paragraph (a), clause (5); nursing homes licensed under chapter 144A or licensed in any other jurisdiction; pharmacies; surgical centers; bus and taxicab transportation, or any other providers of transportation services other than ambulance services required to be licensed; supervised living facilities for persons with mental retardation or related conditions, licensed under Minnesota Rules, parts 4665.0100 to 4665.9900; residential

care homes licensed under chapter 144B; board and lodging establishments providing only custodial services that are licensed under chapter 157 and registered under section 157.17 to provide supportive services or health supervision services; adult foster homes as defined in Minnesota Rules, part 9555.5105; day training and habilitation services for adults with mental retardation and related conditions as defined in section 252.41, subdivision 3; and boarding care homes, as defined in Minnesota Rules, part 4655.0100.

(c) For purposes of this subdivision, "directly to a patient or consumer" includes goods and services provided in connection with independent medical examinations under section 65B.56 or other examinations for purposes of litigation or insurance claims.

Subd. 6. Home health care services. "Home health care services" are services:

(1) defined under the state medical assistance program as home health agency services provided by a home health agency, personal care services and supervision of personal care services, private duty nursing services, and waived services or services by home care providers required to be licensed under chapter 144A; and

(2) provided at a recipient's residence, if the recipient does not live in a hospital, nursing facility, as defined in section 62A.46, subdivision 3, or intermediate care facility for persons with mental retardation as defined in section 256B.055, subdivision 12, paragraph (d).

[For text of subd 6a, see M.S.1996]

Subd. 7. Hospital. "Hospital" means a hospital licensed under chapter 144, or a hospital licensed by any other jurisdiction.

[For text of subds 9b to 12b, see M.S.1996]

Subd. 13. Surgical center. "Surgical center" is an outpatient surgical center as defined in Minnesota Rules, chapter 4675, or a similar facility located in any other jurisdiction.

Subd. 14. Wholesale drug distributor. "Wholesale drug distributor" means a wholesale drug distributor required to be licensed under sections 151.42 to 151.51.

[For text of subd 15, see M.S.1996]

History: 1997 c 31 art 4 s 1-5; 1997 c 84 art 4 s 1,2; 1997 c 225 art 3 s 4-9,23; 1997 c 251 s 28

295.51 MINIMUM CONTACTS REQUIRED FOR JURISDICTION TO TAX GROSS REVENUE.

Subdivision 1. **Business transactions in Minnesota.** A hospital, surgical center, or health care provider is subject to tax under sections 295.50 to 295.59 if it is "transacting business in Minnesota." A hospital, surgical center, or health care provider is transacting business in Minnesota if it maintains contacts with or presence in the state of Minnesota sufficient to permit taxation of gross revenues received for patient services under the United States Constitution.

[For text of subd 1a, see M.S.1996]

History: 1997 c 31 art 4 s 6; 1997 c 225 art 3 s 10,23; 1997 c 251 s 28

295.52 TAXES IMPOSED.

[For text of subds 1 and 1a, see M.S.1996]

Subd. 1b. [Repealed, 1997 c 225 art 3 s 23]

[For text of subds 2 and 3, see M.S.1996]

Subd. 4. Use tax; prescription drugs. A person that receives prescription drugs for resale or use in Minnesota, other than from a wholesale drug distributor that paid the tax under subdivision 3, is subject to a tax equal to the price paid multiplied by the tax percentage specified in this section. Liability for the tax is incurred when prescription drugs are received or delivered in Minnesota by the person.

[For text of subd 4a, see M.S.1996]

Subd. 5. Volunteer ambulance services. Volunteer ambulance services are not subject to the tax under this section. For purposes of this requirement, "volunteer ambulance service" means an ambulance service in which all of the individuals whose primary responsibility is direct patient care meet the definition of volunteer under section 144E.35, subdivision 2. The ambulance service may employ administrative and support staff, and remain eligible for this exemption, if the primary responsibility of these staff is not direct patient care.

Subd. 6. Hearing aids and prescription eyewear. The tax liability of a person who meets the definition of a health care provider solely because the person sells or repairs hearing aids and related equipment or prescription eyewear is limited to the gross revenues received from the sale or repair of these items.

Subd. 7. Tax reduction. Notwithstanding subdivisions 1, 1a, 2, 3, and 4, the tax imposed under this section for calendar years 1998 and 1999 shall be equal to 1.5 percent of the gross revenues received on or after January 1, 1998, and before January 1, 2000. The commissioner shall extend the reduced tax rate of 1.5 percent for gross revenues received on or after January 1, 2000, and before January 1, 2002, if the commissioner of finance determines that the health care access fund structural balance projected for fiscal year 2001 will remain positive, prior to any increase of the one percent premium tax under section 60A.15, subdivision 1, paragraph (h), and prior to any tax expenditures related to the increase in the maximum tax credit for research expenses under section 295.53, subdivision 4a, as amended by Laws 1997, chapter 225.

History: 1997 c 31 art 4 s 7; 1997 c 84 art 4 s 3; 1997 c 199 s 14; 1997 c 225 art 3 s 11-13,23; 1997 c 251 s 27,28

295.53 EXEMPTIONS; SPECIAL RULES.

Subdivision 1. Exemptions. (a) The following payments are excluded from the gross revenues subject to the hospital, surgical center, or health care provider taxes under sections 295.50 to 295.57:

(1) payments received for services provided under the Medicare program, including payments received from the government, and organizations governed by sections 1833 and 1876 of title XVIII of the federal Social Security Act, United States Code, title 42, section 1395, and enrollee deductibles, coinsurance, and copayments, whether paid by the Medicare enrollee or by a Medicare supplemental coverage as defined in section 62A.011, subdivision 3, clause (10). Payments for services not covered by Medicare are taxable;

(2) medical assistance payments including payments received directly from the government or from a prepaid plan;

(3) payments received for home health care services;

(4) payments received from hospitals or surgical centers for goods and services on which liability for tax is imposed under section 295.52 or the source of funds for the payment is exempt under clause (1), (2), (7), (8), or (10);

(5) payments received from health care providers for goods and services on which liability for tax is imposed under this chapter or the source of funds for the payment is exempt under clause (1), (2), (7), (8), or (10);

(6) amounts paid for legend drugs, other than nutritional products, to a wholesale drug distributor who is subject to tax under section 295.52, subdivision 3, reduced by reimbursements received for legend drugs under clauses (1), (2), (7), and (8);

(7) payments received under the general assistance medical care program including payments received directly from the government or from a prepaid plan;

(8) payments received for providing services under the MinnesotaCare program including payments received directly from the government or from a prepaid plan and enrollee deductibles, coinsurance, and copayments. For purposes of this clause, coinsurance means the portion of payment that the enrollee is required to pay for the covered service;

(9) payments received by a health care provider or the wholly owned subsidiary of a health care provider for care provided outside Minnesota to a patient who is not domiciled in Minnesota;

- (10) payments received from the chemical dependency fund under chapter 254B;
- (11) payments received in the nature of charitable donations that are not designated for providing patient services to a specific individual or group;
- (12) payments received for providing patient services incurred through a formal program of health care research conducted in conformity with federal regulations governing research on human subjects. Payments received from patients or from other persons paying on behalf of the patients are subject to tax;
- (13) payments received from any governmental agency for services benefiting the public, not including payments made by the government in its capacity as an employer or insurer;
- (14) payments received for services provided by community residential mental health facilities licensed under Minnesota Rules, parts 9520.0500 to 9520.0690, community support programs and family community support programs approved under Minnesota Rules, parts 9535.1700 to 9535.1760, and community mental health centers as defined in section 245.62, subdivision 2;
- (15) government payments received by a regional treatment center;
- (16) payments received for hospice care services;
- (17) payments received by a health care provider for hearing aids and related equipment or prescription eyewear delivered outside of Minnesota;
- (18) payments received by a post-secondary educational institution from student tuition, student activity fees, health care service fees, government appropriations, donations, or grants. Fee for service payments and payments for extended coverage are taxable; and
- (19) payments received for services provided by: assisted living programs and congregate housing programs.
- (b) Payments received by wholesale drug distributors for legend drugs sold directly to veterinarians or veterinary bulk purchasing organizations are excluded from the gross revenues subject to the wholesale drug distributor tax under sections 295.50 to 295.59.

[For text of subd 2, see M.S.1996]

Subd. 3. Separate statement of tax. A hospital, surgical center, or health care provider must not state the tax obligation under section 295.52 in a deceptive or misleading manner. It must not separately state tax obligations on bills provided to patients, consumers, or other payers when the amount received for the services or goods is not subject to tax.

Pharmacies that separately state the tax obligations on bills provided to consumers or to other payers who purchase legend drugs may state the tax obligation as the wholesale price of the legend drugs multiplied by the tax percentage specified in section 295.52. Pharmacies must not state the tax obligation based on the retail price.

Whenever the commissioner determines that a person has engaged in any act or practice constituting a violation of this subdivision, the commissioner may bring an action in the name of the state in the district court of the appropriate county to enjoin the act or practice and to enforce compliance with this subdivision, or the commissioner may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order, or other appropriate relief must be granted.

Subd. 4. Deduction for research. (a) In addition to the exemptions allowed under subdivision 1, a hospital or health care provider may deduct from its gross revenues subject to the hospital or health care provider taxes under sections 295.50 to 295.57 revenues equal to expenditures for qualifying research conducted by an allowable research program.

(b) For purposes of this subdivision, the following requirements apply:

- (1) expenditures must be for program costs of qualifying research conducted by an allowable research program;
- (2) an allowable research program must be a formal program of medical and health care research conducted by an entity which is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or is owned and operated under authority of a governmental unit;
- (3) qualifying research must:

(A) be approved in writing by the governing body of the hospital or health care provider which is taking the deduction under this subdivision;

(B) have as its purpose the development of new knowledge in basic or applied science relating to the diagnosis and treatment of conditions affecting the human body;

(C) be subject to review by individuals with expertise in the subject matter of the proposed study but who have no financial interest in the proposed study and are not involved in the conduct of the proposed study; and

(D) be subject to review and supervision by an institutional review board operating in conformity with federal regulations if the research involves human subjects or an institutional animal care and use committee operating in conformity with federal regulations if the research involves animal subjects. Research expenses are not exempt if the study is a routine evaluation of health care methods or products used in a particular setting conducted for the purpose of making a management decision. Costs of clinical research activities paid directly for the benefit of an individual patient are excluded from this exemption. Basic research in fields including biochemistry, molecular biology, and physiology are also included if such programs are subject to a peer review process.

(c) No deduction shall be allowed under this subdivision for any revenue received by the hospital or health care provider in the form of a grant, gift, or otherwise, whether from a government or nongovernment source, on which the tax liability under section 295.52 is not imposed.

(d) Effective beginning with calendar year 1995, the taxpayer shall not take the deduction under this section into account in determining estimated tax payments or the payment made with the annual return under section 295.55. The total deduction allowable to all taxpayers under this section for calendar years beginning after December 31, 1994, may not exceed \$65,000,000. To implement this limit, each qualifying hospital and qualifying health care provider shall submit to the commissioner by March 15 its total expenditures qualifying for the deduction under this section for the previous calendar year. The commissioner shall sum the total expenditures of all taxpayers qualifying under this section for the calendar year. If the resulting amount exceeds \$65,000,000, the commissioner shall allocate a part of the \$65,000,000 deduction limit to each qualifying hospital and health care provider in proportion to its share of the total deductions. The commissioner shall pay a refund to each qualifying hospital or provider equal to its share of the deduction limit multiplied by the tax percentage specified in section 295.52. The commissioner shall pay the refund no later than May 15 of the calendar year.

(e) This subdivision expires January 1, 2000.

Subd. 4a. Credit for research. (a) In addition to the exemptions allowed under subdivision 1, a hospital or health care provider may claim an annual credit against the total amount of tax, if any, the hospital or health care provider owes for that calendar year under sections 295.50 to 295.57. The credit shall equal 2.5 percent of revenues for patient services used to fund expenditures for qualifying research conducted by an allowable research program. The amount of the credit shall not exceed the tax liability of the hospital or health care provider under sections 295.50 to 295.57.

(b) For purposes of this subdivision, the following requirements apply:

(1) expenditures must be for program costs of qualifying research conducted by an allowable research program;

(2) an allowable research program must be a formal program of medical and health care research conducted by an entity which is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or is owned and operated under authority of a governmental unit;

(3) qualifying research must:

(A) be approved in writing by the governing body of the hospital or health care provider which is taking the deduction under this subdivision;

(B) have as its purpose the development of new knowledge in basic or applied science relating to the diagnosis and treatment of conditions affecting the human body;

(C) be subject to review by individuals with expertise in the subject matter of the proposed study but who have no financial interest in the proposed study and are not involved in the conduct of the proposed study; and

(D) be subject to review and supervision by an institutional review board operating in conformity with federal regulations if the research involves human subjects or an institutional animal care and use committee operating in conformity with federal regulations if the research involves animal subjects. Research expenses are not exempt if the study is a routine evaluation of health care methods or products used in a particular setting conducted for the purpose of making a management decision. Costs of clinical research activities paid directly for the benefit of an individual patient are excluded from this exemption. Basic research in fields including biochemistry, molecular biology, and physiology are also included if such programs are subject to a peer review process.

(c) No credit shall be allowed under this subdivision for any revenue received by the hospital or health care provider in the form of a grant, gift, or otherwise, whether from a government or nongovernment source, on which the tax liability under section 295.52 is not imposed.

(d) The taxpayer shall apply for the credit under this section on the annual return under section 295.55, subdivision 5.

(e) Beginning September 1, 2000, if the actual or estimated amount paid under this section for the calendar year exceeds \$2,500,000, the commissioner of finance shall determine the rate of the research credit for the following calendar year to the nearest one-half percent so that refunds paid under this section will most closely equal \$2,500,000. The commissioner of finance shall publish in the State Register by October 1 of each year the rate of the credit for the following calendar year. A determination under this section is not subject to the rulemaking provisions of chapter 14.

Subd. 5. [Repealed, 1997 c 225 art 3 s 23]

History: 1997 c 31 art 4 s 8–10; 1997 c 84 art 4 s 4; 1997 c 225 art 3 s 14–17,23; 1997 c 251 s 28

NOTE: Subdivision 4a, as added by Laws 1997, chapter 225, article 3, section 17, is effective for expenditures incurred after December 31, 1999. Laws 1997, chapter 225, article 3, section 24.

295.54 CREDIT FOR TAXES PAID.

Subdivision 1. Taxes paid to another state. A hospital, surgical center, or health care provider that has paid taxes to another jurisdiction measured by gross revenues and is subject to tax under sections 295.52 to 295.59 on the same gross revenues is entitled to a credit for the tax legally due and paid to another jurisdiction to the extent of the lesser of (1) the tax actually paid to the other jurisdiction, or (2) the amount of tax imposed by Minnesota on the gross revenues subject to tax in the other taxing jurisdictions.

Subd. 2. Pharmacy refund. A pharmacy may claim an annual refund against the total amount of tax, if any, the pharmacy owes during that calendar year under section 295.52, subdivision 2. The refund shall equal the amount paid by the pharmacy to a wholesale drug distributor subject to tax under section 295.52, subdivision 3, for legend drugs delivered by the pharmacy outside of Minnesota, multiplied by the tax percentage specified in section 295.52. If the amount of the refund exceeds the tax liability of the pharmacy under section 295.52, subdivision 1b, the commissioner shall provide the pharmacy with a refund equal to the excess amount. Each qualifying pharmacy must apply for the refund on the annual return as provided under section 295.55, subdivision 5. The refund must be claimed within one year of the due date of the return. Interest on refunds paid under this subdivision will begin to accrue 60 days after the date a claim for refund is filed. For purposes of this subdivision, the date a claim is filed is the due date of the return or the date of the actual claim for refund, whichever is later.

[For text of subd 3, see M.S.1996]

History: 1997 c 31 art 4 s 11; 1997 c 225 art 3 s 18,19,23; 1997 c 251 s 28

295.55 PAYMENT OF TAX.

[For text of subd 1, see M.S.1996]

Subd. 2. Estimated tax; hospitals; surgical centers. (a) Each hospital or surgical center must make estimated payments of the taxes for the calendar year in monthly installments to the commissioner within 15 days after the end of the month.

(b) Estimated tax payments are not required of hospitals or surgical centers if the tax for the calendar year is less than \$500 or if a hospital has been allowed a grant under section 144.1484, subdivision 2, for the year.

(c) Underpayment of estimated installments bear interest at the rate specified in section 270.75, from the due date of the payment until paid or until the due date of the annual return at the rate specified in section 270.75. An underpayment of an estimated installment is the difference between the amount paid and the lesser of (1) 90 percent of one-twelfth of the tax for the calendar year or (2) the tax for the actual gross revenues received during the month.

[For text of subs 3 to 7, see M.S.1996]

History: 1997 c 84 art 4 s 5; 1997 c 225 art 3 s 20,23; 1997 c 251 s 28

295.58 DEPOSIT OF REVENUES AND PAYMENT OF REFUNDS.

The commissioner shall deposit all revenues, including penalties and interest, derived from the taxes imposed by sections 295.50 to 295.57 and from the insurance premiums tax on health maintenance organizations, community integrated service networks, and nonprofit health service plan corporations in the health care access fund in the state treasury. Refunds of overpayments must be paid from the health care access fund in the state treasury. There is annually appropriated from the health care access fund to the commissioner of revenue the amount necessary to make any refunds required under section 295.54.

History: 1997 c 225 art 2 s 62

295.582 AUTHORITY.

(a) A hospital, surgical center, or health care provider that is subject to a tax under section 295.52, or a pharmacy that has paid additional expense transferred under this section by a wholesale drug distributor, may transfer additional expense generated by section 295.52 obligations on to all third-party contracts for the purchase of health care services on behalf of a patient or consumer. The additional expense transferred to the third-party purchaser must not exceed the tax percentage specified in section 295.52 multiplied against the gross revenues received under the third-party contract, and the tax percentage specified in section 295.52 multiplied against copayments and deductibles paid by the individual patient or consumer. The expense must not be generated on revenues derived from payments that are excluded from the tax under section 295.53. All third-party purchasers of health care services including, but not limited to, third-party purchasers regulated under chapter 60A, 62A, 62C, 62D, 62H, 62N, 64B, 65A, 65B, 79, or 79A, or under section 471.61 or 471.617, must pay the transferred expense in addition to any payments due under existing contracts with the hospital, surgical center, pharmacy, or health care provider, to the extent allowed under federal law. A third-party purchaser of health care services includes, but is not limited to, a health carrier or community integrated service network that pays for health care services on behalf of patients or that reimburses, indemnifies, compensates, or otherwise insures patients for health care services. A third-party purchaser shall comply with this section regardless of whether the third-party purchaser is a for-profit, not-for-profit, or nonprofit entity. A wholesale drug distributor may transfer additional expense generated by section 295.52 obligations to entities that purchase from the wholesaler, and the entities must pay the additional expense. Nothing in this section limits the ability of a hospital, surgical center, pharmacy, wholesale drug distributor, or health care provider to recover all or part of the section 295.52 obligation by other methods, including increasing fees or charges.

(b) Each third-party purchaser regulated under any chapter cited in paragraph (a) shall include with its annual renewal for certification of authority or licensure documentation indicating compliance with paragraph (a).

(c) Any hospital, surgical center, or health care provider subject to a tax under section 295.52 or a pharmacy that has paid additional expense transferred under this section by a wholesale drug distributor may file a complaint with the commissioner responsible for regulating the third-party purchaser if at any time the third-party purchaser fails to comply with paragraph (a).

(d) If the commissioner responsible for regulating the third-party purchaser finds at any time that the third-party purchaser has not complied with paragraph (a), the commissioner may take enforcement action against a third-party purchaser which is subject to the commissioner's regulatory jurisdiction and which does not allow a hospital, surgical center, pharmacy, or provider to pass-through the tax. The commissioner may by order fine or censure the third-party purchaser or revoke or suspend the certificate of authority or license of the third-party purchaser to do business in this state if the commissioner finds that the third-party purchaser has not complied with this section. The third-party purchaser may appeal the commissioner's order through a contested case hearing in accordance with chapter 14.

History: 1997 c 31 art 4 s 12; 1997 c 225 art 3 s 21,23; 1997 c 251 s 28