

CHAPTER 328

CHAIN STORES AND MAIL ORDER COMPANIES

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328.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subdivision 2. **Person.** The word "person" includes individuals, partnerships, trusts, associations, joint stock companies, corporations, and firms, however organized or whatever be the plan of operation.

Subdivision 3. **Store and mercantile establishment.** The terms "store" and "mercantile establishment" mean any fixed place at which the business is conducted even if such place is at the same time being used for other purposes.

Subdivision 4. **Conducting a business by the system of chain stores.** "Conducting a business by the system of chain stores" means conducting such business from two or more stores under a single or common ownership, supervision, management, or control.

Subdivision 5. **Common ownership.** Two or more stores or mercantile establishments shall be treated as being under a single or common ownership, supervision, management, or control if directly or indirectly owned or controlled by a single person or by any group of persons having a common interest in such stores or mercantile establishments, or if 20 per cent or more of the gross revenues, net revenues, or profits from any such stores or mercantile establishments shall, directly or indirectly, be required to be immediately or ultimately made available for the beneficial use, or shall, directly or indirectly, inure to the immediate or ultimate benefit of any single person or any such group of persons having a common interest therein.

Subdivision 6. **Mail order establishment.** The term "mail order establishment" means any place or places, order offices, warehouses, and reserve depots in which are stored or kept or orders taken for goods, wares, and merchandise owned or controlled, directly or indirectly, by a person engaged in selling same at retail within this state and at least 15 per cent of whose total intrastate sales therefrom are filled and completed in response to orders from purchasers for such goods received by or through the mails, express, messenger, or written communication, and which person issues and distributes price lists, circular advertisements, pamphlets, or catalogs to prospective purchasers or customers describing such goods, wares, and merchandise for sale.

[*Ex. 1937 c. 93 s. 1; Ex. 1937 c. 93 pt. 1 s. 3*] (5887-18a, 5887-18d, 5887-18f)

328.02 TAX IMPOSED ON CERTAIN CHAIN STORES. There is hereby imposed upon every person engaged within the state of Minnesota in conducting a business by the system of chain stores from which are sold or otherwise disposed of at retail any goods, wares, or merchandise, excepting any person selling at retail one or more of the following: fuel, lumber, building material, gasoline, oils, and grain, if the gross sales of any such person of such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per cent of the total gross sales from all sources of any such person; and excepting, further, cooperative associations organized under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed; and

excepting, further, any person who within this state produces, manufactures, prepares, distributes, and sells, at retail only, food products which he himself produces, manufactures, or prepares, where such retail sales are made only from stores owned, operated, and controlled exclusively by any such person, an annual tax for each calendar year during any part of which such taxpayer shall be so engaged, which tax shall be computed at the rate provided in section 328.03.

[*Ex. 1937 c. 93 pt. 1 s. 1*] (5887-18b)

328.03 RATES OF TAX. The tax imposed by section 328.02 shall be at the following rates upon each store or mercantile establishment within this state under a single or common ownership, supervision, or management:

- (1) \$ 10.00 on each of the first and second;
 - (2) \$ 20.00 on each of the third and fourth;
 - (3) \$ 30.00 on the fifth;
 - (4) \$ 40.00 on the sixth;
 - (5) \$ 50.00 on the seventh;
 - (6) \$ 60.00 on the eighth;
 - (7) \$ 70.00 on the ninth;
 - (8) \$ 80.00 on the tenth;
 - (9) \$ 95.00 on the eleventh;
 - (10) \$110 on the twelfth;
 - (11) \$125 on the thirteenth;
 - (12) \$140 on the fourteenth;
 - (13) \$155 on each from the fifteenth to the twenty-fifth, inclusive;
 - (14) \$175 on each from the twenty-sixth to thirty-fifth, inclusive;
 - (15) \$200 on each from the thirty-sixth to forty-fifth, inclusive;
 - (16) \$225 on each from the forty-sixth to fifty-fifth, inclusive;
 - (17) \$250 on each from the fifty-sixth to sixty-fifth, inclusive;
 - (18) \$300 on each from the sixty-sixth to the one hundred fiftieth, inclusive;
- and
- (19) \$350 on each from the one hundred fifty-first and over.

[*Ex. 1937 c. 93 pt. 1 s. 2*] (5887-18c)

328.04 BASIS OF COMPUTATION OF TAX; DISCONTINUANCE OF STORES. The tax imposed hereby shall be computed on the basis of the number of stores or mercantile establishments under a single or common ownership, supervision, management, or control during each calendar year; provided, however, that if any such store or mercantile establishment is established or is discontinued during any calendar year, the tax shall be computed in accordance with the number of stores in operation before and after such change; and, for the purpose thereof, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month.

[*Ex. 1937 c. 93 pt. 1 s. 4*] (5887-18e)

328.05 IMPOSITION OF TAX. There is hereby imposed upon any person engaged within the state in conducting a business by the method or system of mail order establishments from any of which are sold or otherwise disposed of in intrastate commerce, at retail, any goods, wares, or merchandise, excepting any person selling at retail one or more of the following: horticultural and nursery products, seeds, tombstones and building stone, books, pamphlets, circulars, magazines, newspapers, greeting cards, and church equipment, if the gross sales of any such person from such product or products shall, during any year for which the tax is imposed, equal or exceed 95 per cent of the total gross sales from all sources of any such person, an annual tax for each calendar year during any part of which such taxpayers shall be so engaged, which tax shall be computed as provided in section 328.06.

[*Ex. 1937 c. 93 pt. 2 s. 2*] (5887-18g)

328.06 RATES OF TAX. The tax imposed by section 328.05 shall be at the following rates upon each mail order establishment within this state under the same general management, supervision, ownership, or control, as such general management, supervision, ownership, and control are defined in section 328.01:

- (1) \$ 200 on the first store;

- (2) \$ 300 on the second store;
- (3) \$ 400 on the third store;
- (4) \$ 500 on the fourth store;
- (5) \$ 600 on the fifth store;
- (6) \$ 700 on the sixth store;
- (7) \$ 800 on the seventh store;
- (8) \$ 900 on the eighth store;
- (9) \$1,000 on the ninth store;
- (10) \$1,100 on the tenth store; and
- (11) \$1,200 on each store thereafter.

[*Ex. 1937 c. 93 pt. 2 s. 3*] (5887-18h)

328.07 COMPUTATION OF TAX; COMMON OWNERSHIP; NUMBER OF ESTABLISHMENTS. The tax imposed by section 328.05 shall be computed on the basis of the number of mail order establishments under a single or common ownership, supervision, management, or control during each calendar year; provided, however, that if any such mail order establishment is established or is discontinued during any calendar year, the tax shall be computed in accordance with the number of establishments in operation before and after such change; and, for the purpose thereof, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month.

[*1937 c. 93 pt. 2 s. 4*] (5887-18i)

328.08 ANNUAL STATEMENT, FILED WITH COMMISSIONER OF TAXATION; PAYMENT OF TAX; RETURN. Every person on whom a tax is imposed by this chapter shall make and file with the commissioner of taxation, on or before January twentieth, of each year, on such forms as shall be prescribed therefor by the commissioner, showing the number of stores or mercantile establishments or mail order establishments under such single or common ownership, supervision, management, or control during the preceding calendar year. The tax imposed shall be paid to the commissioner at the time of the filing of the return.

If any person subject to a tax hereunder shall fail to make and file a return and pay the tax, as hereinbefore provided, within the time specified therefor, the commissioner of taxation shall make and file a return for such person, based upon the best information which he possesses or is able to obtain, and shall assess a tax upon the basis of such return and add thereto a specific penalty of ten per cent of the tax as so assessed. The commissioner shall forthwith mail to such person, if his address is known, a statement of the tax and penalty so assessed, and such person shall pay the tax and assessment, together with interest thereon from the time it should have been paid at the rate of six per cent per annum, within 30 days after the mailing of the notice.

[*Ex. 1937 c. 93 G. P. s. 1*] (5887-18j)

328.09 ENFORCEMENT. If any tax remains unpaid for more than 30 days after the same shall become due and payable, an action shall be brought, in the name of the state, against such person for the collection thereof in the manner in which other general debts due the state are enforced by action.

[*Ex. 1937 c. 93 G. P. s. 2*] (5887-18k)

328.10 REFUND; LIMITATIONS; CERTIFICATE; INTEREST. A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected, other than by suit, as aforesaid, an amount in excess of the tax legally due, may file with the commissioner of taxation a claim for the refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected. If the commissioner finds that the taxpayer has paid more than was legally due, he shall issue his certificate for the refundment of such excess, with interest at the rate of six per cent per annum computed from the date of the payment or collection of the tax until the date of refund, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this chapter as other state moneys are expended. So much of the proceeds of the taxes imposed by this chapter as may be necessary therefor are hereby appropriated for the purpose of such refundments.

[*Ex. 1937 c. 93 G. P. s. 3*] (5887-18l)

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328.11 RULES; FORMS. The commissioner of taxation shall administer this chapter and enforce the collection of the taxes imposed, and he may make and publish such rules and regulations, not inconsistent with this chapter, as he may deem necessary to its efficient enforcement. He shall prepare blank forms for the returns required, distribute the same throughout the state, and furnish them upon application; but the failure to receive such blanks shall not relieve any person from the obligation of making any return required of him by this chapter.

[*Ex. 1937 c. 93 G. P. s. 5*] (5887-18n)

328.12 TESTIMONIAL POWERS; LICENSEES TO FILE STATEMENT WITH COMMISSIONER. For the purpose of determining the correctness of any return or of determining whether any person should have made a return hereunder, the commissioner of taxation shall have power to examine, or cause to be examined, any books, papers, or records relevant to making such determinations. He shall have power to require the attendance of any taxpayer or other person having knowledge or information relevant to such determinations, to compel the production of books, papers, or records, to take testimony in matters material to such determinations, and to administer oaths or affirmations in any such connection. The commissioner may require any owner or manager of any store in the state to file with him a statement, under oath, showing the ownership, management, and control of such store for the purpose of determining whether such store is subject to the tax hereby imposed.

[*Ex. 1937 c. 93 G. P. s. 6*] (5887-18o)

328.13 PROCEEDS TO GENERAL REVENUE FUND. The revenue derived from taxes, interest, or penalties provided for in this chapter, when collected, shall be paid into the general revenue fund of the state.

[*Ex. 1937 c. 93 G. P. s. 7*] (5887-18p)

328.14 ONE TAX TO EXCLUDE OTHER TAX. Any store or establishment taxable as a mail order establishment shall not be included in computing the tax imposed by section 328.02, if otherwise taxable hereunder.

[*Ex. 1937 c. 93 G. P. s. 9*] (5887-18r)

328.15 CESSATION OF TAX AFTER 1940. No tax shall be imposed or collected under this chapter for the year 1941 and years subsequent thereto, but the provisions thereof shall remain in full force and effect with respect to any tax levied or assessed, or which should have been levied and assessed, for any year prior to 1941.

[*Ex. 1937 c. 93 G. P. s. 11*] (5887-18t)

328.16 FALSE RETURN OR EVASION; MISDEMEANOR. Any taxpayer who shall wilfully make a false return with intent to evade the payment of any tax imposed by this chapter shall be guilty of a misdemeanor.

[*Ex. 1937 c. 93 G. P. s. 4*] (5887-18m)