

section 181.13, and the employer makes a legal tender of the amount which the employer in good faith claims to be due, the employer shall not be liable for any sum greater than the amount so tendered and interest thereon at the legal rate, unless, in an action brought in a court having jurisdiction, the employee recovers a greater sum than the amount so tendered with interest thereon; and if, in the suit, the employee fails to recover a greater sum than that so tendered, with interest, the employee shall pay the cost of the suit, otherwise the cost shall be paid by the employer.

**Subd. 4. EMPLOYEES ENTRUSTED WITH MONEY OR PROPERTY.** In cases where the discharged or quitting employee was, during employment, entrusted with the collection, disbursement, or handling of money or property, the employer shall have ten secular calendar days after the termination of the employment to audit and adjust the accounts of the employee before the employee's wages or commissions shall become due and payable be paid as provided in this section, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of the period allowed for audit and adjustment payment of the employee's wages or commissions. If, upon such audit and adjustment of the accounts of the employee, it is found that any money or property entrusted to the employee by the employer has not been properly accounted for or paid over to the employer, as provided by the terms of the contract of employment, the employee shall not be entitled to the benefit of sections 181.13 to 181.17, but the claim for unpaid wages or commissions of such employee, if any, shall be disposed of as provided by existing law.

**Subd. 5. PLACE OF PAYMENT.** Wages and commissions paid under this section shall be paid at the usual place of payment unless the employee requests that the wages and commissions be sent to the employee through the mails. If, in accordance with a request by the employee, the employee's wages and commissions are sent to the employee through the mail, the wages and commissions shall be deemed to have been paid as of the date of their postmark for the purposes of this section.

Sec. 7. Minnesota Statutes 1996, section 181.171, is amended by adding a subdivision to read:

**Subd. 4. EMPLOYER; DEFINITION.** "Employer" means any person having one or more employees in Minnesota and includes the state and any political subdivision of the state. This definition applies to this section and sections 181.02, 181.03, 181.031, 181.032, 181.06, 181.063, 181.10, 181.101, 181.13, 181.14, and 181.16.

Presented to the governor May 1, 1997

Signed by the governor May 2, 1997, 3:16 p.m.

## CHAPTER 84—H.F.No. 807

*An act relating to taxation; making policy changes to income and withholding taxes, property taxes, mortgage registry and deed taxes, sales and use taxes, MinnesotaCare taxes, and tax collections; providing civil penalties; amending Minnesota Statutes 1996, sections 8.30; 60A.15, subdivision 1; 270.02, subdivision 3; 270.063; 270.10, subdivisions 1 and 5; 270.101, subdivisions 2, 3, and*

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by adding a subdivision; 270.271, by adding a subdivision; 270.273, subdivision 2; 270.276, subdivision 2; 270.67, subdivision 2; 270.68, subdivision 1; 270.69, subdivision 11; 270.701, subdivisions 2 and 5; 270.708, subdivision 1; 270.721; 270.73, subdivision 1; 271.06, subdivision 2; 271.08, subdivision 1; 271.10, subdivision 2; 275.075; 287.08; 287.28; 287.31, subdivision 1; 289A.08, subdivision 3; 289A.09, subdivision 2; 289A.20, subdivisions 1 and 2; 289A.31, subdivision 1; 289A.36, subdivision 4; 289A.37, subdivision 1; 289A.40, subdivisions 1 and 2; 289A.60, subdivision 15; 290.095, subdivision 3; 290.17, subdivision 2; 290.35, subdivision 2; 290A.04, subdivision 2h; 295.50, subdivisions 3 and 14; 295.52, subdivision 4; 295.53, subdivision 4; 295.55, subdivision 2; 297A.01, by adding a subdivision; 297A.041; 297A.07, subdivision 3; 297A.24, by adding a subdivision; 297A.25, subdivisions 12 and 41; 297A.45, subdivision 4; 297B.035, subdivision 3; 297B.11; 299F.21; 515B.1-105; and 515B.1-116; Laws 1995, chapter 264, article 10, section 15; proposing coding for new law in Minnesota Statutes, chapters 270; and 287.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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## ARTICLE 1

### PROPERTY TAXES

Section 1. Minnesota Statutes 1996, section 275.075, is amended to read:

**275.075 OMISSION BY INADVERTENCE; CORRECTION.**

Whenever the amount of taxes as levied and certified by the tax levying body of any county, city, town, special taxing district, or school district has not been, as the result of error, inadvertence, or from the estimates as provided in section 275.08, by the county auditor extended and spread in conformity therewith, such tax levying body may include in its tax levy for the year following, the whole or any part of the amount so omitted through error, inadvertence, or from the estimates as provided in section 275.08, in addition to its current levy and in addition to and notwithstanding any limitations to the contrary.

Sec. 2. Minnesota Statutes 1996, section 287.08, is amended to read:

**287.08 TAX, HOW PAYABLE; RECEIPTS.**

(a) The tax imposed by sections 287.01 to 287.12 shall be paid to the treasurer of the county in which the mortgaged land or some part thereof is situated at or before the time of filing the mortgage for record or registration. The treasurer shall endorse receipt on the mortgage, countersigned by the county auditor, who shall charge the amount to the treasurer and such receipt shall be recorded with the mortgage, and such receipt of the record thereof shall be conclusive proof that the tax has been paid to the amount therein stated and authorize any county recorder to record the mortgage. Its form, in substance, shall be "registration tax hereon of ..... dollars paid." If the mortgages be exempt from taxation the endorsement shall be "exempt from registration tax," to be signed in either case by the treasurer as such, and in case of payment to be countersigned by the auditor. In case the treasurer shall be unable to determine whether a claim of exemption should be

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allowed, the tax shall be paid to the court administrator of as in the case of a taxable mortgage.

(b) Upon written application of the taxpayer, the county treasurer may refund in whole or in part any tax which has been erroneously paid, or a person having paid a mortgage registry tax amount may seek a refund of such tax, or other appropriate relief, by bringing an action in the district tax court of in the county to abide the order of such court made upon motion of the county attorney, or of the claimant upon notice as required by the court, in which the tax was paid, within 60 days of the payment. The action is commenced by the serving of a petition for relief on the county treasurer, and by filing a copy with the court. The county attorney shall defend the action. The county treasurer shall notify the treasurer of each county that has or would receive a portion of the tax as paid.

(c) If the county treasurer determines a refund should be paid, or if a refund is ordered, the county treasurer of each county that actually received a portion of the tax shall immediately pay a proportionate share of three percent of the refund using any available county funds. The county treasurer of each county which received, or would have received, a portion of the tax shall also pay their county's proportionate share of the remaining 97 percent of the court-ordered refund on or before the tenth day of the following month using solely the mortgage registry tax funds that would be paid to the commissioner of revenue on that date under section 287.12. If the funds on hand under this procedure are insufficient to fully fund 97 percent of the court ordered refund, the county treasurer of the county in which the action was brought shall file a claim with the commissioner of revenue under section 16A.48 for the remaining portion of 97 percent of the refund, and shall pay over the remaining portion upon receipt of a warrant from the state issued pursuant to the claim.

(d) When any such mortgage covers real property situate in more than one county in this state the whole of such tax shall be paid to the treasurer of the county where the mortgage is first presented for record or registration, and the payment shall be receipted and countersigned as above provided. The tax shall be divided and paid over by the county treasurer receiving the same, on or before the tenth day of each month after receipt thereof, to the county or counties entitled thereto in the ratio which the market value of the real property covered by the mortgage in each county bears to the market value of all the property described in the mortgage. In making such division and payment the county treasurer shall send therewith a statement giving the description of the property described in the mortgage and the market value of the part thereof situate in each county. For the purpose aforesaid, the treasurer of any county may require the treasurer of any other county to certify to the former the market valuation of any tract of land in any such mortgage.

Sec. 3. Minnesota Statutes 1996, section 287.28, is amended to read:

**287.28 REFUNDMENTS REFUNDS OR REDEMPTION.**

(a) The county treasurer may order the refundment refund in whole or in part of any tax which has been erroneously or unjustly paid and may allow for or redeem such of the stamps, issued under the authority of sections 287.21 to 287.36 as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended or for which the owner may have no use or which through mistake may have been improperly or unnecessarily used. Such order shall be made only upon written application of the taxpayer and upon

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approval of the county board. Refunds therefor shall be paid out of the general fund of the county.

(b) A person having paid a deed tax amount may seek a refund of the tax, or other appropriate relief, by commencing an action in tax court in the county where the tax was paid, within 60 days of the payment. The action is commenced by serving a petition for relief on the county treasurer, and filing a copy with the court. The county attorney shall defend the action. The county treasurer shall notify the treasurer of each county that has, or would receive a portion of the tax as paid. Any refund of deed tax which the county treasurer determines should be made, and any court ordered refund of deed tax, shall be accomplished using the refund procedures in section 287.08.

Sec. 4. Minnesota Statutes 1996, section 290A.04, subdivision 2h, is amended to read:

Subd. 2h. (a) If the gross property taxes payable on a homestead increase more than 12 percent over the net property taxes payable in the prior year on the same property that is owned and occupied by the same owner on January 2 of both years, and the amount of that increase is \$100 or more for taxes payable in 1996 and 1997, a claimant who is a homeowner shall be allowed an additional refund equal to 60 percent of the amount of the increase over the greater of 12 percent of the prior year's net property taxes payable or \$100 for taxes payable in 1996 and 1997. This subdivision shall not apply to any increase in the gross property taxes payable attributable to improvements made to the homestead after the assessment date for the prior year's taxes. This subdivision shall not apply to any increase in the gross property taxes payable attributable to the termination of valuation exclusions under section 273.11, subdivision 16.

The maximum refund allowed under this subdivision is \$1,000.

(b) For purposes of this subdivision, the following terms have the meanings given:

(1) "Net property taxes payable" means property taxes payable minus refund amounts for which the claimant qualifies pursuant to subdivision 2 and this subdivision.

(2) "Gross property taxes" means net property taxes payable determined without regard to the refund allowed under this subdivision.

(c) In addition to the other proofs required by this chapter, each claimant under this subdivision shall file with the property tax refund return a copy of the property tax statement for taxes payable in the preceding year or other documents required by the commissioner.

~~(d) On or before December 1, 1995, the commissioner shall estimate the cost of making the payments provided by this subdivision for taxes payable in 1996. Notwithstanding the open appropriation provision of section 290A.23, if the estimated total refund claims for taxes payable in 1996 exceed \$5,500,000, the commissioner shall first reduce the 60 percent refund rate enough, but to no lower a rate than 50 percent, so that the estimated total refund claims do not exceed \$5,500,000. If the commissioner estimates that total claims will exceed \$5,500,000 at a 50 percent refund rate, the commissioner shall also reduce the \$1,000 maximum refund amount by enough so that total estimated refund claims do not exceed \$5,500,000.~~

~~The determinations of the revised thresholds by the commissioner are not rules subject to chapter 14.~~

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(e) Upon request, the appropriate county official shall make available the names and addresses of the property taxpayers who may be eligible for the additional property tax refund under this section. The information shall be provided on a magnetic computer disk. The county may recover its costs by charging the person requesting the information the reasonable cost for preparing the data. The information may not be used for any purpose other than for notifying the homeowner of potential eligibility and assisting the homeowner, without charge, in preparing a refund claim.

Sec. 5. Minnesota Statutes 1996, section 515B.1-105, is amended to read:

**515B.1-105 SEPARATE TITLES AND TAXATION.**

(a) In a cooperative:

(1) The unit owners' interests in units and their allocated interests are wholly personal property, unless the declaration provides that the interests are wholly real estate. The characterization of these interests as real or personal property shall not affect whether homestead exemptions or classifications apply.

(2) The ownership interest in a unit which may be sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, is the right to possession of that unit under a proprietary lease coupled with the allocated interests of that unit, and the association's interest in that unit is not affected by the transaction.

(b) In a condominium or planned community:

(1) Each unit, and its allocated interest in the common elements, constitutes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements.

(c) ~~If a declaration is recorded prior to 30 days before any installment of real estate taxes becomes payable, the local taxing authority shall split the taxes so payable on the common interest community among the units. Interest and penalties which would otherwise accrue shall not begin to accrue until at least 30 days after the split is accomplished.~~

(d) A unit used for residential purposes together with not more than three units used for vehicular parking, and their common element interests, shall be treated as one parcel of real estate in determining whether homestead exemptions or classifications apply.

Sec. 6. Minnesota Statutes 1996, section 515B.1-116, is amended to read:

**515B.1-116 RECORDING.**

(a) A declaration, bylaws, any amendment to a declaration or bylaws, and any other instrument affecting a common interest community shall be entitled to be recorded. In those counties which have a tract index, the county recorder shall enter the declaration in the tract index for each unit affected. The registrar of titles shall file the declaration on the certificate of title for each unit affected.

(b) The recording officer shall upon request promptly assign a number (CIC number) to a common interest community to be formed or to a common interest community resulting from the merger of two or more common interest communities.

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(c) Documents recorded pursuant to this chapter shall in the case of registered land be filed, and references to the recording of documents shall mean filed in the case of registered land.

(d) Subject to any specific requirements of this chapter, if any document to be recorded pursuant to this chapter requires approval by a certain vote or agreement of the unit owners or secured parties, an affidavit of the secretary of the association stating that the required vote or agreement has occurred shall be attached to the document and shall constitute prima facie evidence of the representations contained therein.

(e) If a common interest community is located on registered land, the recording fee for any document affecting two or more units shall be the then-current fee for registering the document on the certificates of title for the first ten affected certificates and one-third of the then-current fee for each additional affected certificate. This provision shall not apply to recording fees for deeds of conveyance, with the exception of deeds given pursuant to sections 515B.2-119 and 515B.3-112.

(f) Except as permitted under this subsection, a recording officer shall not file or record a declaration creating a new common interest community, unless the county treasurer has certified that the property taxes payable in the current year for the real estate included in the proposed common interest community have been paid. This certification is in addition to the certification for delinquent taxes required by section 272.12. In the case of pre-existing common interest communities, the recording officer shall accept, file, and record the following instruments, without requiring a certification as to the current or delinquent taxes on any of the units in the common interest community: (i) a declaration subjecting the common interest community to this chapter; (ii) a declaration changing the form of a common interest community pursuant to section 515B.2-123; or (iii) an amendment to or restatement of a the declaration or, bylaws, or an amended CIC plat, approved by the required vote of unit owners of an association may be recorded without the necessity of paying the current or delinquent taxes on any of the units in the common interest community. In order for the instruments to be accepted and recorded under the preceding sentence, the assessor must certify or otherwise inform the recording officer that, for taxes payable in the current year, the assessor has allocated taxable values to each unit or has separately assessed each unit.

(g) The registrar of titles shall not require the filing on certificates of title previously issued for units in a flexible common interest community of an amendment to a declaration pursuant to section 515B.2-111 made solely to add additional real estate.

#### Sec. 7. EFFECTIVE DATE.

Section 1 is effective for taxes payable in 1998 and thereafter. Sections 2, 3, and 4 are effective the day following final enactment. Sections 5 and 6 are effective for declarations submitted for recording on or after July 1, 1997.

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## ARTICLE 2

## INCOME AND WITHHOLDING

Section 1. Minnesota Statutes 1996, section 289A.08, subdivision 3, is amended to read:

Subd. 3. **CORPORATIONS.** A corporation that is subject to the state's jurisdiction to tax under section 290.014, subdivision 5, must file a return, except that a foreign operating corporation as defined in section 290.01, subdivision 6b, is not required to file a return. The commissioner shall adopt rules for the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined report. All members of an affiliated group that elect to are required to file a combined report must file one return on behalf of the members of the group under rules adopted by the commissioner may change or rescind the election by filing the form required by the commissioner.

Sec. 2. Minnesota Statutes 1996, section 290.095, subdivision 3, is amended to read:

Subd. 3. **CARRYOVER.** (a) A net operating loss incurred in a taxable year: (i) beginning after December 31, 1986, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss; (ii) beginning before January 1, 1987, shall be a net operating loss carryover to each of the five taxable years following the taxable year of such loss subject to the provisions of Minnesota Statutes 1986, section 290.095; and (iii) beginning before January 1, 1987, shall be a net operating loss carryback to each of the three taxable years preceding the loss year subject to the provisions of Minnesota Statutes 1986, section 290.095.

(b) The entire amount of the net operating loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable net income, adjusted by the modifications specified in subdivision 4, for each of the taxable years to which such loss may be carried.

(c) Where a corporation does business both within and without Minnesota, and apportions its income under the provisions of section 290.191, the net operating loss deduction incurred in any taxable year shall be allowed to the extent of the apportionment ratio of the loss year.

(d) The provisions of sections 381, 382, and 384 of the Internal Revenue Code apply to carryovers in certain corporate acquisitions and special limitations on net operating loss carryovers. The limitation amount determined under section 382 shall be applied to net income, before apportionment, in each post change year to which a loss is carried.

Sec. 3. Minnesota Statutes 1996, section 290.17, subdivision 2, is amended to read:

Subd. 2. **INCOME NOT DERIVED FROM CONDUCT OF A TRADE OR BUSINESS.** The income of a taxpayer subject to the allocation rules that is not derived from the conduct of a trade or business must be assigned in accordance with paragraphs (a) to (f):

(a)(1) Subject to paragraphs (a)(2) and (a)(3), income from labor or personal or professional services is assigned to this state if, and to the extent that, the labor or services are

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performed within it; all other income from such sources is treated as income from sources without this state.

Severance pay shall be considered income from labor or personal or professional services.

(2) In the case of an individual who is a nonresident of Minnesota and who is an athlete or entertainer, income from compensation for labor or personal services performed within this state shall be determined in the following manner:

(i) The amount of income to be assigned to Minnesota for an individual who is a nonresident salaried athletic team employee shall be determined by using a fraction in which the denominator contains the total number of days in which the individual is under a duty to perform for the employer, and the numerator is the total number of those days spent in Minnesota. For purposes of this paragraph, off-season training activities, unless conducted at the team's facilities as part of a team imposed program, are not included in the total number of duty days. Bonuses earned as a result of play during the regular season or for participation in championship, play-off, or all-star games must be allocated under the formula. Signing bonuses are not subject to allocation under the formula if they are not conditional on playing any games for the team, are payable separately from any other compensation, and are nonrefundable; and

(ii) The amount of income to be assigned to Minnesota for an individual who is a nonresident, and who is an athlete or entertainer not listed in clause (i), for that person's athletic or entertainment performance in Minnesota shall be determined by assigning to this state all income from performances or athletic contests in this state.

(3) ~~For purposes of this section, amounts received by a nonresident from the United States, its agencies or instrumentalities, the Federal Reserve Bank, the state of Minnesota or any of its political or governmental subdivisions, or a Minnesota volunteer firefighters' relief association, by way of payment as a pension, public employee retirement benefit, or any combination of these, or as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 408, or 409, or as defined in section 403(b) or 457 of the Internal Revenue Code as "retirement income" as defined in section (b)(1) of the State Income Taxation of Pension Income Act, Public Law Number 104-95, are not considered income derived from carrying on a trade or business or from performing personal or professional services in Minnesota, and are not taxable under this chapter.~~

(b) Income or gains from tangible property located in this state that is not employed in the business of the recipient of the income or gains must be assigned to this state.

(c) Income or gains from intangible personal property not employed in the business of the recipient of the income or gains must be assigned to this state if the recipient of the income or gains is a resident of this state or is a resident trust or estate.

Gain on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in this state to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than 50 percent of the value of the partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

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Gain on the sale of goodwill or income from a covenant not to compete that is connected with a business operating all or partially in Minnesota is allocated to this state to the extent that the income from the business in the year preceding the year of sale was assignable to Minnesota under subdivision 3.

When an employer pays an employee for a covenant not to compete, the income allocated to this state is in the ratio of the employee's service in Minnesota in the calendar year preceding leaving the employment of the employer over the total services performed by the employee for the employer in that year.

(d) Income from the operation of a farm shall be assigned to this state if the farm is located within this state and to other states only if the farm is not located in this state.

(e) Income from winnings on Minnesota pari-mutuel betting tickets, the Minnesota state lottery, and lawful gambling as defined in section 349.12, subdivision 24, conducted within the boundaries of the state of Minnesota shall be assigned to this state.

(f) All items of gross income not covered in paragraphs (a) to (e) and not part of the taxpayer's income from a trade or business shall be assigned to the taxpayer's domicile.

Sec. 4. Minnesota Statutes 1996, section 290.35, subdivision 2, is amended to read:

Subd. 2. **APPORTIONMENT OF TAXABLE NET INCOME.** The commissioner shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business, including reinsurance premiums; provided, the commissioner shall add to the taxable net income so apportioned to this state the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge on premiums imposed by sections 69.54 to 69.56 and the surcharge imposed by section 168A.40, subdivision 3) which shall have been deducted from gross income by the company in arriving at its total net income under the provisions of such act of Congress.

(a) For purposes of determining the Minnesota apportionment percentage, premiums from reinsurance contracts in connection with property in or liability arising out of activity in, or in connection with the lives or health of Minnesota residents shall be assigned to Minnesota and premiums from reinsurance contracts in connection with property in or liability arising out of activity in, or in connection with the lives or health of non-Minnesota residents shall be assigned outside of Minnesota. Reinsurance premiums are presumed to be received for a Minnesota risk and are assigned to Minnesota, if:

- (1) the reinsurance contract is assumed for a company domiciled in Minnesota; and
- (2) the taxpayer, upon request of the commissioner, fails to provide reliable records indicating the reinsured contract covered non-Minnesota risks.

For purposes of this paragraph, "Minnesota risk" means coverage in connection with property in or liability arising out of activity in Minnesota, or in connection with the lives or health of Minnesota residents.

(b) The apportionment method prescribed by paragraph (a) shall be presumed to fairly and correctly determine the taxpayer's taxable net income. If the method pre-

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scribed in paragraph (a) does not fairly reflect all or any part of taxable net income, the taxpayer may petition for or the commissioner may require the determination of taxable net income by use of another method if that method fairly reflects taxable net income. A petition within the meaning of this section must be filed by the taxpayer on such form as the commissioner shall require.

Sec. 5. Laws 1995, chapter 264, article 10, section 15, is amended to read:

**Sec. 15. EFFECTIVE DATE.**

Section 1 is effective for returns due after December 31, 1995. Section 2 as it relates to quarterly withholding deposits is effective for withholding done after December 31, 1995, and the remainder of section 2 is effective for payments due after December 31, 1995. Sections 3 and 5 are effective for federal determinations after December 31, 1995. Section 4 is effective for estates of decedents dying after the date of final enactment. Section 6 is effective for deaths after December 31, 1995, and trusts that become irrevocable after December 31, 1995, or are first administered in Minnesota after December 31, 1995. Sections 7 and 9 to 11 are effective for tax years beginning after December 31, 1995. Section 12 is effective for wages paid after December 31, 1995. Sections 8 and 13 are effective for tax years beginning after December 31, 1994.

**Sec. 6. INTEREST ON 1996 PENALTIES.**

Notwithstanding any law to the contrary, for calendar year 1996 individual income tax returns, the late payment penalty under Minnesota Statutes, section 289A.60, subdivision 1, and interest under Minnesota Statutes, section 289A.55, subdivisions 2, 4, and 9, will start on May 30, 1997 instead of April 15, 1997.

**Sec. 7. EFFECTIVE DATES.**

Section 1 is effective for tax years beginning after December 31, 1997.

Sections 2 to 4 are effective for tax years beginning after December 31, 1996.

Section 5 is effective for trusts first administered in Minnesota after December 31, 1995, and tax years beginning after December 31, 1996.

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### ARTICLE 3

#### SALES AND SPECIAL TAXES

Section 1. Minnesota Statutes 1996, section 289A.40, subdivision 2, is amended to read:

Subd. 2. **BAD DEBT LOSS.** If a claim relates to an overpayment because of a failure to deduct a loss due to a bad debt or to a security becoming worthless, the claim is considered timely if filed within seven years from the date prescribed for the filing of the return. A claim relating to an overpayment of taxes under chapter 297A must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extensions

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granted for filing the return, but only if filed within the extended time, or within one year from the date the taxpayer's federal income tax return is timely filed claiming the bad debt deduction, whichever period expires later. The refund or credit is limited to the amount of overpayment attributable to the loss.

Sec. 2. Minnesota Statutes 1996, section 289A.60, subdivision 15, is amended to read:

Subd. 15. **ACCELERATED PAYMENT OF JUNE SALES TAX LIABILITY; PENALTY FOR UNDERPAYMENT.** If a vendor is required by law to submit an estimation of June sales tax liabilities and 75 percent payment by a certain date, the vendor shall pay a penalty equal to ten percent of the amount of actual June liability required to be paid in June less the amount remitted in June. The penalty must not be imposed, however, if the amount remitted in June equals the lesser of: (1) 70 percent of the actual June liability; (2) 75 percent of the preceding May's liability; or (3) 75 percent of the average monthly liability for the previous calendar year.

Sec. 3. Minnesota Statutes 1996, section 297A.01, is amended by adding a subdivision to read:

Subd. 22. **LEASING.** "Leasing" includes all transfers of possession of tangible personal property or the use thereof by the lessee for a consideration when title remains with the lessor at the end of the lease. If a contract designated as a lease binds the lessee for a fixed term and the lessee is to obtain title at the end of the term of the agreement or has the option at that time to purchase the property for a nominal amount, the contract is regarded as a sale and not as a lease. For purposes of this chapter, a lease of tangible personal property is a series of transactions that impose upon the lessee multiple payment obligations. A taxable transaction is considered to have occurred when an obligation to make a lease payment becomes due under the terms of the agreement or trade practices of the lessor. For purposes of this subdivision, "nominal amount" means an amount so small, slight, or negligible that it is not economically significant and bears no relation to the real value of the item being purchased.

Sec. 4. Minnesota Statutes 1996, section 297A.041, is amended to read:

**297A.041 OPERATOR OF FLEA MARKETS; SELLER'S PERMITS REQUIRED.**

The operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event, as a prerequisite to renting or leasing space on the premises owned or controlled by the operator to a person desiring to engage in or conduct business as a seller, shall obtain evidence that the seller is the holder of a valid seller's permit issued under section 297A.04, or a written statement from the seller that the seller is not offering for sale any item that is taxable under this chapter.

Flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event, as used in this section, means an activity involving a series of sales sufficient in number, scope, and character to constitute a regular course of business, and that would not qualify as an isolated or occasional sale under section 297A.25, subdivision 12.

~~This section does not apply to an operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling~~

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event that is: (1) held in conjunction with a community sponsored festival that has a duration of four or fewer consecutive days no more than once a year; or (2) conducted by a nonprofit organization annually or less frequently.

Sec. 5. Minnesota Statutes 1996, section 297A.24, is amended by adding a subdivision to read:

Subd. 3. LOCAL TAXES. If an item has been subjected to a sales tax imposed by a political subdivision of this state and is used, stored, or consumed in another political subdivision imposing a local use tax, a credit shall be given for all legally imposed sales taxes paid by the purchaser with respect to that item.

Sec. 6. Minnesota Statutes 1996, section 297A.25, subdivision 12, is amended to read:

Subd. 12. **OCCASIONAL SALES.** (a) The gross receipts from the isolated or occasional sale of tangible personal property in Minnesota not made in the normal course of business of selling that kind of property, and the storage, use, or consumption of property acquired as a result of such a sale are exempt.

(b) This exemption does not apply to sales of tangible personal property primarily used in a trade or business unless (1) the sale occurs in a transaction subject to or described in section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033 of the Internal Revenue Code of 1986, as amended through December 31, 1990; (2) the sale is between members of a controlled group as defined in section 1563(a) of the Internal Revenue Code of 1986, as amended through December 31, 1990; (3) the sale is a sale of farm machinery; (4) the sale is a farm auction sale; (5) the sale is a sale of substantially all of the assets of a trade or business; or (6) the total amount of gross receipts from the sale of trade or business property made during the calendar month of the sale and the preceding 11 calendar months does not exceed \$1,000.

(c) For purposes of this subdivision, the following terms have the meanings given.

(1) A "farm auction" is a public auction conducted by a licensed auctioneer if substantially all of the property sold consists of property used in the trade or business of farming and property not used primarily in a trade or business.

(2) "Trade or business" includes the assets of a separate division, branch, or identifiable segment of a trade or business if, before the sale, the income and expenses attributable to the separate division, branch, or identifiable segment could be separately ascertained from the books of account or record (the lease or rental of an identifiable segment does not qualify for the exemption).

(3) A "sale of substantially all of the assets of a trade or business" must occur as a single transaction or a series of related transactions occurring within the 12-month period beginning on the date of the first sale of assets intended to qualify for the exemption provided in paragraph (b), clause (5).

For purposes of this subdivision, "normal course of business" means activities that demonstrate a commercial continuity or consistency of making sales or performing services for the purposes of attaining profit or producing income. Factors that indicate that a person is acting in the normal course of business include:

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- (1) systematic solicitation of sales through advertising media;
- (2) entering into contracts to perform services or provide tangible personal property;
- (3) maintaining a place of business; or
- (4) use of exemption certificates to purchase goods exempt from the sales tax.

Sec. 7. Minnesota Statutes 1996, section 297A.25, subdivision 41, is amended to read:

Subd. 41. **BULLET-PROOF VESTS.** The gross receipts from the sale of bullet-resistant soft body armor that is ~~flexible, concealable, and custom-fitted to provide~~ provides the wearer with ballistic and trauma protection are exempt if purchased by a law enforcement agency of the state or a political subdivision of the state, or a licensed peace officer, as defined in section 626.84, subdivision 1. ~~The bullet-resistant soft body armor must meet or exceed the requirements of standard 0101.01 of the National Institute of Law Enforcement and Criminal Justice in effect on December 30, 1986, or meet or exceed the requirements of the standard except wet armor conditioning.~~

Sec. 8. Minnesota Statutes 1996, section 297A.45, subdivision 4, is amended to read:

Subd. 4. **CITY LOCAL SALES TAX MAY NOT BE IMPOSED.** Notwithstanding any other law or charter provision to the contrary, a ~~home rule charter or statutory city political subdivision~~ political subdivision that imposes a general sales tax ~~may shall~~ not impose the sales tax on solid waste management services that are subject to the tax under this section.

Sec. 9. **EFFECTIVE DATE.**

Section 1 is effective for refund claims filed for bad debts recognized for federal income tax purposes after June 30, 1997.

Section 2 is effective for returns filed after January 1, 1998.

Sections 3 to 5 and 8 are effective July 1, 1997.

Sections 6 and 7 are effective for sales and purchases occurring after June 30, 1997.

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**ARTICLE 4**

**MINNESOTACARE**

Section 1. Minnesota Statutes 1996, section 295.50, subdivision 3, is amended to read:

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

- (1) a hospital for patient services;

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(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: (i) to a Minnesota resident by a wholesale drug distributor who is a nonresident pharmacy directly, by common carrier, or by mail; or (ii) 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;

(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; and

(6) a pharmacy for medical supplies, appliances, and equipment.

Sec. 2. Minnesota Statutes 1996, section 295.50, subdivision 14, is amended to read:

Subd. 14. **WHOLESALE DRUG DISTRIBUTOR.** "Wholesale drug distributor" means a wholesale drug distributor required to be licensed under sections 151.42 to 151.51 or a nonresident pharmacy required to be registered under section 151.19.

Sec. 3. Minnesota Statutes 1996, section 295.52, subdivision 4, is amended to read:

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 two percent of the price paid. Liability for the tax is incurred when prescription drugs are received or delivered in Minnesota by the person.

Sec. 4. Minnesota Statutes 1996, section 295.53, subdivision 4, is amended to read:

Subd. 4. **DEDUCTION FOR RESEARCH.** (a) In addition to the exemptions allowed under subdivision 1, a hospital or health care provider ~~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,~~ 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 programs program.

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

(1) expenditures for allowable research programs are the direct and general must be for program costs for activities which are part 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 approved by the governing body of the hospital or health care provider which also includes active solicitation of research funds from government and private sources. Allowable 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:

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

~~(1)~~ (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;

~~(2)~~ (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

~~(3)~~ (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 or for which the tax liability under section 295.52 has been received from a third party as provided for in section 295.582.

(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 two percent. The commissioner shall pay the refund no later than May 15 of the calendar year.

Sec. 5. Minnesota Statutes 1996, section 295.55, subdivision 2, is amended to read:

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 ten 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

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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.

**Sec. 6. EFFECTIVE DATE.**

Sections 1, 2, and 3 are effective for gross revenues received on or after July 1, 1997. Section 4 is effective for research expenditures incurred on or after January 1, 1997. Section 5 is effective for estimated payments due after July 1, 1997.

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**ARTICLE 5**

**COLLECTIONS**

Section 1. Minnesota Statutes 1996, section 270.063, is amended to read:

**270.063 COLLECTION OF DELINQUENT TAXES; COSTS.**

**Subdivision 1. APPROPRIATION.** For the purpose of collecting delinquent state tax liabilities, there is appropriated to the commissioner of revenue an amount representing the cost of collection by contract with collection agencies, revenue departments of other states, or attorneys to enable the commissioner to reimburse these agencies, departments, or attorneys for this service. The commissioner shall report quarterly on the status of this program to the chair of the house tax and appropriation committees and senate tax and finance committees.

**Subd. 2. PREPAYMENT.** Notwithstanding section 16A.15, subdivision 3, the commissioner of revenue may authorize the prepayment of sheriff's fees, attorney fees, fees charged by revenue departments of other states, or court costs to be incurred in connection with the collection of delinquent tax liabilities owed to the commissioner of revenue.

**Subd. 3. COLLECTION OF FINANCIAL INSTITUTION FEES.** The commissioner shall collect from a taxpayer any collection fees or costs charged by financial institutions and incurred by the commissioner.

Sec. 2. Minnesota Statutes 1996, section 270.101, subdivision 3, is amended to read:

**Subd. 3. PROCEDURE FOR ASSESSMENT.** The commissioner may assess liability for the taxes described in subdivision 1 against a person liable under this section. The assessment may be based upon information available to the commissioner. It must be made within the prescribed period of limitations for assessing the underlying tax, or within one year after the date of an order assessing underlying tax, whichever period expires later. An order assessing personal liability under this section is reviewable under section 289A.65 and is appealable to tax court.

If a person has been assessed under this section for an amount for a given period and the time for appeal has expired or there has been a final determination that the person is

**New language is indicated by underline, deletions by strikeout.**



liable, collection action is not stayed pursuant to section 270.10, subdivision 5, for subsequent assessments of additional amounts for the same person for the same period and tax type.

Sec. 3. Minnesota Statutes 1996, section 270.68, subdivision 1, is amended to read:

Subdivision 1. **LEGAL ACTION.** In addition to all other methods authorized by law for the collection of tax, if any tax payable to the commissioner of revenue or to the department of revenue, including penalties and interest thereon, is not paid within 60 days after it is required by law to be paid, the commissioner of revenue may proceed under this subdivision. Within five years after the date of assessment of the tax or at any time a lien filed under section 270.69 is enforceable, or, if the action is to renew or enforce a judgment, at any time before the judgment's expiration, the commissioner may bring an action at law against the person liable for the payment or collection of the tax, in the name of the state, for the recovery of the tax and interest and penalties due in respect thereof. The action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the taxpayer, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by the taxpayer shall be conclusive against the taxpayer in this matter. If no place is named in the return, the action may be commenced in Ramsey county. The action shall be commenced by filing with the court administrator a statement showing the name and address of the taxpayer, if known, an itemized summary of the taxable periods and the type of tax, the tax due and unpaid and the interest and penalties due with respect thereto under the provisions of law applicable to the tax, and shall contain a prayer that the court adjudge the taxpayer to be indebted on account of the taxes, interest, and penalties in the amount specified in the statement; a copy of the statement shall be furnished to the court administrator therewith. The court administrator shall mail a copy of the statement by certified mail to the taxpayer at the address given in the return, if any; and to the taxpayer's last known address, within five days after the same is filed, except that, if the taxpayer's address is not known, notice shall be made by posting a copy of the statement for ten days in the place in the courthouse where public notices are regularly posted. To litigate the claim, or any part of it, the taxpayer shall serve an answer upon the commissioner on or before the 20th day after the date of mailing the statement; or, if notice has been given by posting, on or before the 20th day after the expiration of the period during which the notice was required to be posted. If no answer is served within the specified time, the court administrator, upon the filing of an affidavit of default, shall enter judgment for the state in the amount prayed for, plus costs of \$10. If an answer is filed, the issues raised shall stand for trial as soon as possible after the filing of the answer, and the court shall determine the issues and direct judgment accordingly; and, if the taxes, interest, or penalties are sustained to any extent over the amount rendered by the taxpayer, shall assess \$10 costs against the taxpayer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The commissioner may call upon the county attorney or the attorney general to conduct the proceedings on behalf of the state. If a proceeding is referred to a county attorney, and the county attorney fails to issue or cause to be issued an indictment or criminal complaint within 30 days after the referral by the commissioner, the attorney general may conduct the proceeding. Execution shall be issued upon the judgment at the request of the commissioner, and the execution shall, in all other respects, be governed by the laws applica-

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ble to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon the execution.

In addition to the procedure in this subdivision, legal action may be commenced by the commissioner in district court in the same manner or venue as any other civil action.

Sec. 4. Minnesota Statutes 1996, section 270.701, subdivision 2, is amended to read:

Subd. 2. **NOTICE OF SALE.** The commissioner shall as soon as practicable after the seizure of the property give notice of sale of the property to the owner, in the manner of service prescribed in subdivision 1. In the case of personal property, the notice shall be served at least 10 days prior to the sale. In the case of real property, the notice shall be served at least four weeks prior to the sale. The commissioner shall also cause public notice of each sale to be made. In the case of personal property, notice shall be posted at least 10 days prior to the sale at the post office nearest the place county courthouse for the county where the seizure is made, and in not less than two other public places. In the case of real property, six weeks' published notice shall be given prior to the sale, in a newspaper published or generally circulated in the county. The notice of sale provided in this subdivision shall specify the property to be sold, and the time, place, manner and conditions of the sale. Whenever levy is made without regard to the ten-day period provided in section 270.70, subdivision 2, public notice of sale of the property seized shall not be made within the ten-day period unless section 270.702 (relating to sale of perishable goods) is applicable.

Sec. 5. Minnesota Statutes 1996, section 270.701, subdivision 5, is amended to read:

Subd. 5. **MANNER AND CONDITIONS OF SALE.** (a) Before the sale the commissioner shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall be declared to be purchased at the minimum price for the state of Minnesota; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the commissioner shall take into account the expense of making the levy and sale. The announcement of the minimum price determined by the commissioner may be delayed until the receipt of the highest bid.

(b) The sale shall not be conducted in any manner other than:

(i) by public auction, or

(ii) by public sale under sealed bids, or

(iii) in the case of items which individually or in usually marketable units have a value of \$50 or less, by public or private proceedings as a unit or in parcels at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable.

(c) In the case of seizure of several items of property, the items may be offered separately, in groups, or in the aggregate, and shall be sold under whichever method produces the highest aggregate amount, except that sales under paragraph (b), item (iii), must produce a reasonable amount under the circumstances.

(d) Payment in full shall be required at the time of acceptance of a bid, except that a part of the payment may be deferred by the commissioner for a period not to exceed 30 days.

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(e) Other methods (including advertising) in addition to those prescribed in subdivision 2 may be used in giving notice of the sale.

(f) The commissioner may adjourn the sale from time to time for a period not to exceed 30 days.

(g) If payment in full is required at the time of acceptance of a bid and is not then and there paid, the commissioner shall forthwith proceed to again sell the property in the manner provided in this section. If the conditions of the sale permit part of the payment to be deferred, and if the part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or that part thereof as has not been paid, together with interest at the rate specified in section 549.09 from the date of the sale; or, in the discretion of the commissioner, the sale may be declared by the commissioner to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in this section. In the event of a readvertisement and sale, any new purchaser shall receive the property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by the defaulting purchaser shall be forfeited.

Sec. 6. Minnesota Statutes 1996, section 270.708, subdivision 1, is amended to read:

Subdivision 1. **COLLECTION OF LIABILITY.** Any money realized by proceedings under this chapter, whether by seizure, by surrender under section 270.70 (except pursuant to subdivision 9 thereof), by sale of seized property, or by sale of property redeemed by the state of Minnesota (if the interest of the state of Minnesota in the property was a lien arising under the provisions of section 270.69), or by agreement, arrangement, or any other means shall be applied as follows:

(a) First, against the expenses of the proceedings; then

(b) If the property seized and sold is subject to a tax administered by the commissioner of revenue which has not been paid, the amount remaining after applying clause (a) shall next be applied against the tax liability (and, if the tax was not previously assessed, it shall then be assessed); and

(c) The amount, if any, remaining after applying clauses (a) and (b) shall be applied against the tax liability in respect of which the levy was made or the sale was conducted.

Sec. 7. Minnesota Statutes 1996, section 270.721, is amended to read:

270.721 **REVOCAION OF ~~CORPORATE~~ CERTIFICATES OF AUTHORITY TO DO BUSINESS IN THIS STATE.**

When a foreign corporation authorized to do business in this state under chapter 303, or a foreign limited liability company or partnership authorized to do business in this state under chapter 322B, fails to comply with any tax laws administered by the commissioner of revenue, the commissioner may serve the secretary of state with a certified copy of an order finding such failure to comply. The secretary of state, upon receipt of the order, shall revoke the certificate of authority ~~of the corporation~~ to do business in this state, and shall reinstate the certificate under section 303.19 or section 322B.960, subdivision 6, only when the corporation or limited liability company or partnership has obtained from the commissioner an order finding that the corporation or limited liability company or partnership is in compliance with state tax law. An order requiring revocation of a cer-

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tificate shall not be issued unless the commissioner gives the corporation or limited liability company or partnership 30 days' written notice of the proposed order, specifying the violations of state tax law, and affording the corporation an opportunity to request a contested case hearing under chapter 14.

Sec. 8. Minnesota Statutes 1996, section 270.73, subdivision 1, is amended to read:

Subdivision 1. **POSTING, NOTICE.** Pursuant to the authority to disclose under section 270B.12, subdivision 4, the commissioner shall, by the 15th of each month, submit to the commissioner of public safety a list of all taxpayers who are required to pay, withhold, or collect the tax imposed by section 290.02, 290.92, or 297A.02, or local sales and use tax payable to the commissioner of revenue, or a local option tax administered and collected by the commissioner of revenue, and who are ~~30~~ ten days or more delinquent in either filing a tax return or paying the tax.

The commissioner of revenue is under no obligation to list a taxpayer whose business is inactive. At least ten days before notifying the commissioner of public safety, the commissioner of revenue shall notify the taxpayer of the intended action.

The commissioner of public safety shall post the list in the same manner as provided in section 340A.318, subdivision 3. The list will prominently show the date of posting. If a taxpayer previously listed ~~cures the delinquency by filing files all returns and paying~~ pays all taxes then due, the commissioner shall notify the commissioner of public safety within two business days that the delinquency was cured.

Sec. 9. Minnesota Statutes 1996, section 289A.36, subdivision 4, is amended to read:

Subd. 4. **THIRD PARTY SUBPOENA WHERE TAXPAYER'S IDENTITY IS KNOWN.** An investigation may extend to a person that the commissioner determines has access to information that may be relevant to the examination or investigation. When a subpoena requiring the production of records as described in subdivision 2 is served on a third-party record keeper, written notice of the subpoena must be mailed to the taxpayer and to any other person who is identified in the subpoena. The notices must be given within three days of the day on which the subpoena is served. Notice to the taxpayer required by this section is sufficient if it is mailed to the last address on record with the commissioner.

The provisions of this subdivision relating to notice to the taxpayer or other parties identified in the subpoena do not apply if there is reasonable cause to believe that the giving of notice may lead to attempts to conceal, destroy, or alter records or assets relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

Sec. 10. Minnesota Statutes 1996, section 297A.07, subdivision 3, is amended to read:

Subd. 3. **NEW PERMITS AFTER REVOCATION.** The commissioner shall not issue a new permit or reinstate a revoked permit after revocation unless the taxpayer applies for a permit and provides reasonable evidence of intention to comply with the sales and use tax laws and rules. The commissioner may require the applicant to supply security, in addition to that authorized by section 297A.28, as is reasonably necessary to insure compliance with the sales and use tax laws and rules.

New language is indicated by underline, deletions by ~~strikeout~~.

If a taxpayer has had a permit or permits revoked three times in a five-year period, the commissioner shall not issue a new permit or reinstate the revoked permit until 24 months have elapsed after revocation and the taxpayer has satisfied the conditions for reinstatement of a revoked permit or issuance of a new permit imposed by this section and rules adopted hereunder.

For purposes of this subdivision, the term "taxpayer" means an individual, if a revoked permit was issued to or in the name of an individual, or a corporation or partnership, if a revoked permit was issued to or in the name of a corporation or partnership. Taxpayer also means an officer of a corporation, a member of a partnership, or an individual who is liable for delinquent sales taxes, either for the entity for which the new or reinstated permit is at issue, or for another entity for which a permit was previously revoked, or personally as a permit holder.

#### Sec. 11. **EFFECTIVE DATES.**

Section 1 is effective for fees and costs incurred on or after the day following final enactment.

Section 2 as it pertains to the period of limitations for orders assessing personal liability is effective for personal liability assessments based on underlying taxes assessed on or after the day following final enactment. Section 2 as it pertains to the stay of collection action for subsequent assessments is effective for personal liability assessments made on or after the day following final enactment.

Section 3 is effective for causes of action arising before the day following final enactment which are not barred by the statute of limitations as of that date, and for causes of action arising thereafter.

Section 4 is effective for notices posted on or after the day following final enactment.

Section 5 is effective for sales of property seized on or after the day following final enactment.

Section 6 is effective for money realized in connection with property seized on or after the day following final enactment.

Section 7 is effective for orders issued on or after July 1, 1997.

Section 8 is effective with respect to lists submitted to the commissioner of public safety on or after July 1, 1997.

Section 9 is effective with respect to subpoenas served on or after the day following final enactment.

Section 10 is effective for all cases in which the third permit revocation occurs on or after July 1, 1997.

**New language is indicated by underline, deletions by ~~strikeout~~.**

## ARTICLE 6

## MISCELLANEOUS

Section 1. Minnesota Statutes 1996, section 8.30, is amended to read:

**8.30 COMPROMISE OF TAX CLAIMS.**

Notwithstanding any other provisions of law to the contrary, the attorney general shall have authority to compromise taxes, penalties, and interest in any case referred to the attorney general, whether reduced to judgment or not, where, in the attorney general's opinion, it shall be in the best interests of the state to do so. A compromise ~~made hereunder~~ of a tax debt shall be in such form as the attorney general shall prescribe and shall be in writing signed by the attorney general, the taxpayer or taxpayer's representative, and the commissioner of revenue.

Sec. 2. Minnesota Statutes 1996, section 60A.15, subdivision 1, is amended to read:

Subdivision 1. **DOMESTIC AND FOREIGN COMPANIES.** (a) On or before April 1, June 1, and December 1 of each year, every domestic and foreign company, including town and farmers' mutual insurance companies, domestic mutual insurance companies, marine insurance companies, health maintenance organizations, integrated service networks, community integrated service networks, and nonprofit health service plan corporations, shall pay to the commissioner of revenue installments equal to one-third of the insurer's total estimated tax for the current year. Except as provided in paragraphs (d) and (e), installments must be based on a sum equal to two percent of the premiums described in paragraph (b).

(b) Installments under paragraph (a), (d), or (e) are percentages of gross premiums less return premiums on all direct business received by the insurer in this state, or by its agents for it, in cash or otherwise, during such year.

(c) Failure of a company to make payments of at least one-third of either (1) the total tax paid during the previous calendar year or (2) 80 percent of the actual tax for the current calendar year shall subject the company to the penalty and interest provided in this section, unless the total tax for the current tax year is \$500 or less.

(d) For health maintenance organizations, nonprofit health services plan corporations, integrated service networks, and community integrated service networks, the installments must be based on an amount equal to one percent of premiums described in paragraph (b) that are paid after December 31, 1995.

(e) For purposes of computing installments for town and farmers' mutual insurance companies and for mutual property casualty companies with total assets on December 31, 1989, of \$1,600,000,000 or less, the following rates apply:

(1) for all life insurance, two percent;

(2) for town and farmers' mutual insurance companies and for mutual property and casualty companies with total assets of \$5,000,000 or less, on all other coverages, one percent; and

(3) for mutual property and casualty companies with total assets on December 31, 1989, of \$1,600,000,000 or less, on all other coverages, 1.26 percent.

New language is indicated by underline, deletions by ~~strikeout~~.

(f) If the aggregate amount of premium tax payments under this section and the fire marshal tax payments under section 299F.21 made during a calendar year is equal to or exceeds \$120,000, all tax payments in the subsequent calendar year must be paid by means of a funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the payment is due. If the date the payment is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the payment is due.

(g) Premiums under medical assistance, general assistance medical care, the MinnesotaCare program, and the Minnesota comprehensive health insurance plan are not subject to tax under this section.

Sec. 3. Minnesota Statutes 1996, section 270.02, subdivision 3, is amended to read:

**Subd. 3. POWERS, ORGANIZATION, ASSISTANTS.** Subject to the provisions of this chapter and other applicable laws the commissioner shall have power to organize the department with such divisions and other agencies as the commissioner deems necessary and to appoint one deputy commissioner, a department secretary, directors of divisions, and such other officers, employees, and agents as the commissioner may deem necessary to discharge the functions of the department, define the duties of such officers, employees, and agents, and delegate to them any of the commissioner's powers or duties, subject to the commissioner's control and under such conditions as the commissioner may prescribe. Appointments to exercise delegated power to sign documents which require the signature of the commissioner or a delegate by law shall be by written order filed with the secretary of state.

Sec. 4. Minnesota Statutes 1996, section 270.10, subdivision 1, is amended to read:

**Subdivision 1. IN WRITING; APPROVAL BY ATTORNEY GENERAL.** All orders and decisions of the commissioner of revenue, or any subordinates, respecting any tax, assessment, or other obligation, shall be in writing, filed in the offices of the department. Any order or decision increasing or decreasing any tax, assessment, or other obligation by a sum exceeding \$1,000 on real or personal property, or the net tax capacity thereof, or other obligation relating thereto, the result of which is to increase or decrease the total amount payable including penalties and interest, by a sum exceeding \$1,000, and any order or decision increasing or decreasing any other tax by a sum exceeding \$1,000 exclusive of penalties and interest, must bear the written signature or facsimile signature of the commissioner or the commissioner's delegate. Written notice of every order granting a reduction, abatement, or refundment exceeding \$5,000 of any tax exclusive of penalties and interest, shall be given within five days to the attorney general. The attorney general shall forthwith examine the order, and if proper and legal, approve it in writing. The attorney general may waive the right of appeal from the order on behalf of the state or may appeal from the order on behalf of the state as herein provided in chapter 271. Written approval of the commissioner or a delegate and written notice to the attorney general shall not be required with respect to the following orders: (1) orders reducing net tax capacity of property by reason of its classification as a homestead; (2) orders not involving refunds which have the effect only of correcting income and franchise tax assessments to conform to the amounts shown on final returns filed as provided by section 289A.19, subdivisions 1 and 2; and (3) original orders for the refundment of gasoline and special fuel taxes.

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Sec. 5. Minnesota Statutes 1996, section 270.10, subdivision 5, is amended to read:

**Subd. 5. APPEAL; PAYMENT OF ORDER.** Except for orders relating to property tax matters, no collection action may be taken, including the filing of liens under section 270.69, and no late payment penalties may be imposed when a return has been filed for the tax type and period upon which the order is based, if an order of the commissioner, excluding orders relating to property tax matters, is paid:

(1) within 60 days after notice and demand for payment of the order have been mailed to the taxpayer; or

(2) if an administrative appeal or a tax court appeal under chapter 271 is timely filed, within 60 days following final determination of the appeal if the appeal is based upon a constitutional challenge to the tax, and if not, when the decision of the tax court is made.

Sec. 6. Minnesota Statutes 1996, section 270.101, subdivision 2, is amended to read:

**Subd. 2. PERSON DEFINED.** The term "person" includes, but is not limited to, a corporation, estate, trust, organization, or association, whether organized for profit or not, an officer or director of a corporation, a member of a partnership, an employee, a third party (including, but not limited to, a financial institution, lender, or surety), and any other individual or entity. "Person" does not include an unpaid, volunteer member of a board of trustees or directors of an organization exempt from taxation under section 290.05, if the member is solely serving in an honorary capacity, does not participate in the day-to-day or financial operations of the organization, and has no actual knowledge of the failure to file returns or remit taxes.

Sec. 7. Minnesota Statutes 1996, section 270.101, is amended by adding a subdivision to read:

**Subd. 4. RIGHT OF CONTRIBUTION.** A person who has paid all or part of a liability assessed under this section has a cause of action against other liable persons to recover the amount paid in excess of that person's share of the liability. A claim for recovery of contribution may be made only in a proceeding which is separate from, and cannot be joined or consolidated with, an administrative or judicial proceeding or investigation involving the commissioner's administration or enforcement of this section. An order assessing liability under this section against the person from whom contribution is being sought is not a prerequisite for bringing an action for recovery of contribution, nor is the issuance of an order binding on the court in which the proceeding is brought. The court can determine whether each person would be liable under this section and the share of liability. The commissioner cannot be made a party to any proceeding for recovery of contribution, nor is a determination in such a proceeding binding on the commissioner for the purpose of administering or enforcing this section. An action for contribution arises when the liability under this section is paid in full, or the liability of the person seeking contribution has been determined by agreement between the commissioner and such person and paid, and must be brought within the time period prescribed in section 541.05.

Sec. 8. Minnesota Statutes 1996, section 270.271, is amended by adding a subdivision to read:

**Subd. 5. PRIVATE DELIVERY SERVICES.** A reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Ser-

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vice shall be treated as including a reference to any date recorded or marked by any designated delivery service in accordance with section 7502(f) of the Internal Revenue Code.

Sec. 9. Minnesota Statutes 1996, section 270.273, subdivision 2, is amended to read:

Subd. 2. **TERMS OF A TAXPAYER ASSISTANCE ORDER.** A taxpayer assistance order may require the department within a specified time period to release property of the taxpayer levied on, cease any action, take any action as permitted by law, or refrain from taking any action to enforce the state tax laws against the taxpayer, until the issue or issues which give rise to the order have been resolved.

Sec. 10. Minnesota Statutes 1996, section 270.276, subdivision 2, is amended to read:

Subd. 2. **DAMAGES.** On a finding of liability on the part of the defendant in an action brought under subdivision 1, the defendant is liable to the plaintiff in an amount equal to the lesser of \$100,000 \$200,000, or the sum of (1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the employee and (2) the costs of the action. Damages must be paid in accordance with section 3.736, subdivision 7.

Sec. 11. Minnesota Statutes 1996, section 270.67, subdivision 2, is amended to read:

Subd. 2. **EXTENSION AGREEMENTS.** When any portion of any tax payable to the commissioner of revenue together with interest and penalty thereon, if any, has not been paid, the commissioner may extend the time for payment for a further period. When the authority of this section is invoked, the extension shall be evidenced by written agreement signed by the taxpayer and the commissioner, stating the amount of the tax with penalty and interest, if any, and providing for the payment of the amount in regular weekly, semimonthly or monthly installments. The agreement shall may contain a confession of judgment for the amount and for any unpaid portion thereof and shall provide that the commissioner may forthwith enter judgment against the taxpayer in the district court of the county of residence as shown upon the taxpayer's tax return for the unpaid portion of the amount specified in the extension agreement. The agreement shall provide that it can be terminated, after notice by the commissioner, if information provided by the taxpayer prior to the agreement was inaccurate or incomplete, collection of the tax covered by the agreement is in jeopardy, there is a subsequent change in the taxpayer's financial condition, the taxpayer has failed to make a payment due under the agreement, or has failed to pay any other tax or file a tax return coming due after the agreement. The notice must be given at least 14 calendar days prior to termination, and shall advise the taxpayer of the right to request a reconsideration from the commissioner of whether termination is reasonable and appropriate under the circumstances. A request for reconsideration does not stay collection action beyond the 14-day notice period. The commissioner may accept other collateral the commissioner considers appropriate to secure satisfaction of the tax liability. The principal sum specified in the agreement shall bear interest at the rate specified in section 270.75 on all unpaid portions thereof until the same has been fully paid or the unpaid portion thereof has been entered as a judgment. The judgment shall bear interest at the rate specified in section 270.75. If it appears to the commissioner that the tax reported 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 corrected. If after making the extension agreement or entering judgment with respect thereto, the commis-

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sioner determines that the tax as reported by the taxpayer is less than the amount actually due, the commissioner shall assess a further tax in accordance with the provisions of law applicable to the tax. The authority granted to the commissioner by this section 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. 12. Minnesota Statutes 1996, section 270.69, subdivision 11, is amended to read:

Subd. 11. **ERRONEOUS LIENS.** After the filing of a notice of lien under this section on the property or rights to property of a person, the person may appeal to the commissioner, in the form and at the time prescribed by the commissioner, alleging an error in the filing of the lien and requesting its release. If the commissioner determines that the filing of the notice of any lien was erroneous, within 14 days after the determination, the commissioner must issue a certificate of release of the lien. The certificate must include a statement that the filing of the lien was erroneous. In the event that the lien is erroneous and is not released within the 14-day period, reasonable attorney fees shall be paid. Damages must be paid in accordance with section 3.736, subdivision 7. Even if a lien is not erroneous, the commissioner may withdraw the lien if the filing of the lien was premature or not in accordance with administrative procedures of the commissioner, or withdrawal of the lien will facilitate the collection of the tax liability.

Sec. 13. **[270.771] PAYMENTS REQUIRED TO BE MADE BY ELECTRONIC FUNDS TRANSFER.**

(a) If a taxpayer is required to make payment of a tax to the commissioner by means of electronic funds transfer as defined in section 336.4A-104, paragraph (a), the taxpayer shall make all payments of all taxes and fees paid to the commissioner by means of electronic funds transfer.

(b) Paragraph (a) does not apply to payments required to be made for individual income taxes under section 289A.20, subdivision 1, paragraph (a), or 289A.25.

Sec. 14. Minnesota Statutes 1996, section 271.06, subdivision 2, is amended to read:

Subd. 2. **TIME; NOTICE; INTERVENTION.** Except as otherwise provided by law, within 60 days after notice of the making and filing of an order of the commissioner of revenue, the appellant, or the appellant's attorney, shall serve a notice of appeal upon the commissioner and file the original, with proof of such service, with the tax court administrator or with the court administrator of district court acting as court administrator of the tax court; provided, that the tax court, for cause shown, may by written order extend the time for appealing for an additional period not exceeding 30 days. The notice of appeal shall be in the form prescribed by the tax court. Within five days after receipt, the commissioner shall transmit a copy of the notice of appeal to the attorney general in all cases where the amount at issue exceeds \$100. The attorney general shall represent the commissioner, if requested, upon all such appeals except in cases where the attorney general has appealed in behalf of the state, or in other cases where the attorney general deems it against the interests of the state to represent the commissioner, in which event the attorney general may intervene or be substituted as an appellant in behalf of the state at any stage of the proceedings.

Upon a final determination of any other matter over which the court is granted jurisdiction under section 271.01, subdivision 5, the taxpayer or the taxpayer's attorney shall

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file a petition or notice of appeal as provided by law with the court administrator of district court, acting in the capacity of court administrator of the tax court, with proof of service of the petition or notice of appeal as required by law and within the time required by law. As used in this subdivision, "final determination" includes a notice of assessment and equalization for the year in question received from the local assessor, an order of the local board of equalization, or an order of a county board of equalization.

The tax court shall prescribe a filing system so that the notice of appeal or petition filed with the district court administrator acting as court administrator of the tax court is forwarded to the tax court administrator. In the case of an appeal or a petition concerning property valuation for which the assessor, a local board of equalization, a county board of equalization or the commissioner of revenue has issued an order, the officer issuing the order shall be notified of the filing of the appeal. The notice of appeal or petition shall be in the form prescribed by the tax court.

Sec. 15. Minnesota Statutes 1996, section 271.08, subdivision 1, is amended to read:

Subdivision 1. **WRITTEN ORDER.** The tax court, except in small claims division, shall determine every appeal by written order containing findings of fact and the decision of the tax court. A memorandum of the grounds of the decision shall be appended. A certified copy of the order shall be transmitted to the commissioner of revenue or the appropriate unit of government and filed in that office. Notice of the entry of the order and of the substance of the decision shall be given by mail mailed to all other parties who have appeared, and also, in all cases where the amount at issue exceeds \$100, to the attorney general. A motion for rehearing, which includes a motion for amended findings of fact, conclusions of law, or a new trial, must be served by the moving party within 15 days after mailing of the notice by the court as specified in this subdivision, and the motion must be heard within 30 days thereafter, unless the time for hearing is extended by the court within the 30-day period for good cause shown.

Sec. 16. Minnesota Statutes 1996, section 271.10, subdivision 2, is amended to read:

Subd. 2. **SERVICE OF WRIT.** Within 60 days after notice of the making and filing of the order of the tax court, or the making and filing of an order on a petition motion for rehearing, which includes a motion for amended findings of fact, conclusions of law, or a new trial, the petitioner for review shall obtain from the supreme court a writ of certiorari, and shall serve the same upon all other parties appearing in the proceedings before the tax court, and shall file the original, with proof of such service, with the court administrator of the tax court. Every petitioner, except the attorney general, the commissioner of revenue, the state and its political subdivisions, shall also pay to the court administrator the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule, and file a bond or make a deposit in like manner and amount as in case of an appeal from the district court. The fee shall be disposed of as in such case. Return upon the writ shall be made to the supreme court and the matter shall be heard and determined by the court as in other certiorari cases, subject to the provisions hereof and to such rules as the court may prescribe for cases arising hereunder.

Sec. 17. **[287.13] VIOLATIONS; PENALTIES.**

Subdivision 1. **FAILURE TO PAY FULL AMOUNT.** Any person liable for the tax imposed by section 287.05 who fails to pay the full amount of tax imposed under sec-

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tions 287.01 to 287.12, unless such failure is shown to be due to reasonable cause, is liable for a civil penalty of \$250 for each such failure.

Subd. 2. ADDITIONAL PENALTY. Any person who willfully attempts to evade or defeat the tax imposed under sections 287.01 to 287.12, or the payment thereof, shall, in addition to the penalty provided in subdivision 1, be liable for a penalty of 50 percent of the total amount of the underpayment of the tax.

Sec. 18. Minnesota Statutes 1996, section 287.31, subdivision 1, is amended to read:

Subdivision 1. **FAILURE TO COMPLY.** Any person liable for the tax imposed by section 287.21 who fails to comply with the provisions of section 287.25 relating to the attachment or cancellation of documentary stamps, unless such failure is shown to be due to reasonable cause, shall be liable to a civil penalty of \$50 \$250 for each such failure.

Sec. 19. Minnesota Statutes 1996, section 289A.09, subdivision 2, is amended to read:

**Subd. 2. WITHHOLDING STATEMENT TO EMPLOYEE OR PAYEE AND TO COMMISSIONER.** (a) A person required to deduct and withhold from an employee a tax under section 290.92, subdivision 2a or 3, or 290.923, subdivision 2, or who would have been required to deduct and withhold a tax under section 290.92, subdivision 2a or 3, or persons required to withhold tax under section 290.923, subdivision 2, determined without regard to section 290.92, subdivision 19, if the employee or payee had claimed no more than one withholding exemption, or who paid wages or made payments not subject to withholding under section 290.92, subdivision 2a or 3, or 290.923, subdivision 2, to an employee or person receiving royalty payments in excess of \$600, or who has entered into a voluntary withholding agreement with a payee under section 290.92, subdivision 20, must give every employee or person receiving royalty payments in respect to the remuneration paid by the person to the employee or person receiving royalty payments during the calendar year, on or before January 31 of the succeeding year, or, if employment is terminated before the close of the calendar year, within 30 days after the date of receipt of a written request from the employee if the 30-day period ends before January 31, a written statement showing the following:

- (1) name of the person;
  - (2) the name of the employee or payee and the employee's or payee's social security account number;
  - (3) the total amount of wages as that term is defined in section 290.92, subdivision 1, paragraph (1); the total amount of remuneration subject to withholding under section 290.92, subdivision 20; the amount of sick pay as required under section 6051(f) of the Internal Revenue Code; and the amount of royalties subject to withholding under section 290.923, subdivision 2; and
  - (4) the total amount deducted and withheld as tax under section 290.92, subdivision 2a or 3, or 290.923, subdivision 2.
- (b) The statement required to be furnished by this paragraph with respect to any remuneration must be furnished at those times, must contain the information required, and must be in the form the commissioner prescribes.

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(c) The commissioner may prescribe rules providing for reasonable extensions of time, not in excess of 30 days, to employers or payers required to give the statements to their employees or payees under this subdivision.

(d) A duplicate of any statement made under this subdivision and in accordance with rules prescribed by the commissioner, along with a reconciliation in the form the commissioner prescribes of the statements for the calendar year, including a reconciliation of the quarterly returns required to be filed under subdivision 1, must be filed with the commissioner on or before February 28 of the year after the payments were made.

(e) The employer must submit the statements required to be sent to the commissioner on magnetic media, if the magnetic media was required to satisfy the federal reporting requirements of section 6011(e) of the Internal Revenue Code and the regulations issued under it.

(f) A "provider of payroll services" as defined in section 289A.20, subdivision 2, paragraph (f), must submit the returns required by this subdivision and subdivision 1, paragraph (a), with the commissioner by electronic means.

Sec. 20. Minnesota Statutes 1996, section 289A.20, subdivision 1, is amended to read:

Subdivision 1. **INDIVIDUAL INCOME, FIDUCIARY INCOME, MINING COMPANY, CORPORATE FRANCHISE, AND ENTERTAINMENT TAXES.** (a) Individual income, fiduciary, mining company, and corporate franchise taxes must be paid to the commissioner on or before the date the return must be filed under section 289A.18, subdivision 1, or the extended due date as provided in section 289A.19, unless an earlier date for payment is provided.

Notwithstanding any other law, a taxpayer whose unpaid liability for income or corporate franchise taxes, as reflected upon the return, is \$1 or less need not pay the tax.

(b) Entertainment taxes must be paid on or before the date the return must be filed under section 289A.18, subdivision 1.

(c) If a fiduciary administers 100 or more trusts, fiduciary income taxes for all trusts administered by the fiduciary must be paid by funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the tax payment is due. If the date the payment is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the payment is due.

Sec. 21. Minnesota Statutes 1996, section 289A.20, subdivision 2, is amended to read:

Subd. 2. **WITHHOLDING FROM WAGES, ENTERTAINER WITHHOLDING, WITHHOLDING FROM PAYMENTS TO OUT-OF-STATE CONTRACTORS, AND WITHHOLDING BY PARTNERSHIPS AND SMALL BUSINESS CORPORATIONS.** (a) A tax required to be deducted and withheld during the quarterly period must be paid on or before the last day of the month following the close of the quarterly period, unless an earlier time for payment is provided. A tax required to be deducted and withheld from compensation of an entertainer and from a payment to an out-of-state

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contractor must be paid on or before the date the return for such tax must be filed under section 289A.18, subdivision 2. Taxes required to be deducted and withheld by partnerships and S corporations must be paid on or before the date the return must be filed under section 289A.18, subdivision 2.

(b) An employer who, during the previous quarter, withheld more than \$1,500 of tax under section 290.92, subdivision 2a or 3, or 290.923, subdivision 2, must deposit tax withheld under those sections with the commissioner within the time allowed to deposit the employer's federal withheld employment taxes under Treasury Regulation, section 31.6302-1, without regard to the safe harbor or de minimus rules in subparagraph (f) or the one-day rule in subsection (c), clause (3). Taxpayers must submit a copy of their federal notice of deposit status to the commissioner upon request by the commissioner.

(c) The commissioner may prescribe by rule other return periods or deposit requirements. In prescribing the reporting period, the commissioner may classify payors according to the amount of their tax liability and may adopt an appropriate reporting period for the class that the commissioner judges to be consistent with efficient tax collection. In no event will the duration of the reporting period be more than one year.

(d) If less than the correct amount of tax is paid to the commissioner, proper adjustments with respect to both the tax and the amount to be deducted must be made, without interest, in the manner and at the times the commissioner prescribes. If the underpayment cannot be adjusted, the amount of the underpayment will be assessed and collected in the manner and at the times the commissioner prescribes.

(e) If the aggregate amount of the tax withheld during a fiscal year ending June 30 under section 290.92, subdivision 2a or 3, is equal to or exceeds \$50,000 the amounts established for remitting federal withheld taxes pursuant to the regulations promulgated under section 6302(h) of the Internal Revenue Code, the employer must remit each required deposit in the subsequent calendar year by means of a funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the deposit is due. If the date the deposit is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the deposit is due.

(f) Providers of payroll services who remit withholding deposits on behalf of 50 or more employers, or on behalf of any employer with aggregate amounts over the threshold in paragraph (e), must remit all deposits by means of a funds transfer as provided in paragraph (e), regardless of the aggregate amount of tax withheld during a fiscal year for all of the employers. For the purposes of this paragraph, "providers of payroll services" means persons who have custody of or control over another employer's funds for the purpose of paying on behalf of the other employer's Minnesota withholding taxes.

Sec. 22. Minnesota Statutes 1996, section 289A.31, subdivision 1, is amended to read:

Subdivision 1. **INDIVIDUAL INCOME, FIDUCIARY INCOME, MINING COMPANY, CORPORATE FRANCHISE, AND ENTERTAINMENT TAXES.** (a) Individual income, fiduciary income, mining company, and corporate franchise taxes, and interest and penalties, must be paid by the taxpayer upon whom the tax is imposed, except in the following cases:

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(1) The tax due from a decedent for that part of the taxable year in which the decedent died during which the decedent was alive and the taxes, interest, and penalty due for the prior years must be paid by the decedent's personal representative, if any. If there is no personal representative, the taxes, interest, and penalty must be paid by the transferees, as defined in section 289A.38, subdivision 13, to the extent they receive property from the decedent;

(2) The tax due from an infant or other incompetent person must be paid by the person's guardian or other person authorized or permitted by law to act for the person;

(3) The tax due from the estate of a decedent must be paid by the estate's personal representative;

(4) The tax due from a trust, including those within the definition of a corporation, as defined in section 290.01, subdivision 4, must be paid by a trustee; and

(5) The tax due from a taxpayer whose business or property is in charge of a receiver, trustee in bankruptcy, assignee, or other conservator, must be paid by the person in charge of the business or property so far as the tax is due to the income from the business or property.

(b) Entertainment taxes are the joint and several liability of the entertainer and the entertainment entity. The payor is liable to the state for the payment of the tax required to be deducted and withheld under section 290.9201, subdivision 7, and is not liable to the entertainer for the amount of the payment.

(c) The tax imposed under section 290.0922 on partnerships is the joint and several liability of the partnership and the general partners.

Sec. 23. Minnesota Statutes 1996, section 289A.37, subdivision 1, is amended to read:

Subdivision 1. **ORDER OF ASSESSMENT; NOTICE AND DEMAND TO TAXPAYER.** (a) When a return has been filed and the commissioner determines that the tax disclosed by the return is different than the tax determined by the examination, the commissioner shall send an order of assessment to the taxpayer. When no return has been filed, the commissioner may make a return for the taxpayer under section 289A.35 or may send an order of assessment under this subdivision. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights. An order of assessment is final when made but may be reconsidered by the commissioner under section 289A.65.

(b) No collection action can be taken, including the filing of liens under section 270.69, and the penalty under section 289A.60, subdivision 1, is not imposed and no collection action can be taken, including the filing of liens under section 270.69 when a return has been filed for the tax type and period upon which the order is based, if the amount shown on the order is paid to the commissioner: (1) within 60 days after notice of the amount and demand for its payment have the order has been mailed to the taxpayer by the commissioner; or (2) if an administrative appeal is filed under section 289A.65 or a tax court appeal is filed under chapter 271, within 60 days following final determination of the appeal if the appeal is based upon a constitutional challenge to the tax, and if not, when the decision of the tax court is made.

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Sec. 24. Minnesota Statutes 1996, section 289A.40, subdivision 1, is amended to read:

Subdivision 1. **TIME LIMIT; GENERALLY.** Unless otherwise provided in this chapter, a claim for a refund of an overpayment of state tax must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time, or one year from the date of an order assessing tax under section 289A.37, subdivision 1, or one year from the date of a return made by the commissioner under section 289A.35, upon payment in full of the tax, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later. Claims for refund, except for taxes under chapter 297A, filed after the 3-1/2 year period but within the one-year period are limited to the amount of the tax, penalties, and interest on the order or return made by the commissioner and to issues determined by the order or return made by the commissioner.

In the case of assessments under section 289A.38, subdivision 5 or 6, claims for refund under chapter 297A filed after the 3-1/2 year period but within the one-year period are limited to the amount of the tax, penalties, and interest on the order or return made by the commissioner that are due for the period before the 3-1/2 year period.

Sec. 25. Minnesota Statutes 1996, section 297B.035, subdivision 3, is amended to read:

Subd. 3. **SALES IN VIOLATION OF LICENSING REQUIREMENTS.** Motor vehicles sold by a new motor vehicle dealer in contravention of section 168.27, subdivision 10, clause (1)(b) shall not be considered to have been acquired or purchased for resale in the ordinary or regular course of business for the purposes of this chapter, and the dealer shall be required to pay the excise tax due on the purchase of those vehicles. The sale by a lessor of a new motor vehicle under lease within 120 days of the commencement of the lease is deemed a sale in contravention of section 168.27, subdivision 10, clause (1)(b) unless the lessor holds a valid contract or franchise with the manufacturer or distributor of the vehicle. Notwithstanding section 297B.11, the rights of a dealer to appeal any amounts owed by the dealer under this subdivision are governed exclusively by the hearing procedure under section 168.27, subdivision 13.

Sec. 26. Minnesota Statutes 1996, section 297B.11, is amended to read:

**297B.11 REGISTRAR AS AGENT OF COMMISSIONER OF REVENUE; POWERS.**

The state commissioner of revenue is charged with the administration of the sales tax on motor vehicles. The commissioner may prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for the proper and efficient administration of the law. The collection of this sales tax on motor vehicles shall be carried out by the motor vehicle registrar who shall act as the agent of the commissioner and who shall be subject to all rules not inconsistent with the provisions of this chapter, that may be prescribed by the commissioner.

The provisions of chapters 289A and 297A relating to the commissioner's authority to audit, assess, and collect the tax, and to refunds and appeals, are applicable to the sales tax on motor vehicles. The commissioner may impose civil penalties as provided in chapters 289A and 297A, and the additional tax and penalties are subject to interest at the rate provided in section 270.75.

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Sec. 27. Minnesota Statutes 1996, section 299F.21, is amended to read:

**299F.21 FIRE INSURANCE COMPANIES PAY TAX.**

**Subdivision 1. ESTIMATED INSTALLMENT PAYMENTS.** On or before April 1, June 1, and December 1 of each year, every licensed insurance company, including reciprocals or interinsurance exchanges, doing business in the state, excepting farmers' mutual fire insurance companies and township mutual fire insurance companies, shall pay to the commissioner of revenue installments equal to one-third of, a tax upon its fire premiums or assessments or both, based on a sum equal to one-half of one percent of the estimated fire premiums and assessments, less return premiums and dividends, on all direct business received by it in this state, or by its agents for it, in cash or otherwise, during the year, including premiums on policies covering fire risks only on automobiles, whether written under floater form or otherwise. In the case of a mutual company or reciprocal exchange the dividends or savings paid or credited to members in this state shall be construed to be return premiums. The money so received into the state treasury shall be credited to the general fund. A company that fails to make payments of at least one-third of either (1) the total tax paid during the previous calendar year or (2) 80 percent of the actual tax for the current calendar year is subject to the penalty and interest provided in this chapter, unless the total tax for the current tax year is \$500 or less.

**Subd. 1a. ELECTRONIC FUNDS TRANSFER PAYMENTS.** If the aggregate amount of fire marshal tax payments under this section and the premium tax payments under section 60A.15 made during a calendar year is equal to or exceeds \$120,000, all tax payments in the subsequent calendar year must be paid by means of a funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the payment is due. If the date the payment is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the payment is due.

**Subd. 1b. ADDITION TO TAX.** In case of an underpayment of installments by an insurer, there must be added to the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of underpayment.

**Subd. 1b-1c. AMOUNT OF UNDERPAYMENT.** For purposes of subdivision 1a, the amount of the underpayment is the excess of: (1) the amount of the installment; over (2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

**Subd. 1d-1d. PERIOD OF UNDERPAYMENT.** The period of the underpayment runs from the date the installment was required to be paid to the earliest of the following dates:

(1) on March 1 following the close of the taxable year;

(2) with respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this clause, a payment of estimated tax on any installment date is considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under clause (1), for the installment date.

**Subd. 1d-1e. DEFINITION OF TAX.** The term "tax" means the tax imposed by this chapter.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 1e. 1f. **FAILURE TO FILE ESTIMATE.** In the case of an insurer that fails to file an estimated tax statement for a taxable year when one is required, the period of the underpayment runs from the installment dates as set forth in subdivision 1 to whichever of the periods set forth in subdivision 1c is the earlier.

Subd. 2. **ANNUAL RETURNS.** (a) Every insurer required to pay a tax under this section shall make and file a statement of estimated taxes for the period covered by the installment tax payment. The statement shall be in the form prescribed by the commissioner of revenue.

(b) On or before March 1, annually every insurer subject to taxation under this section shall make an annual return for the preceding calendar year setting forth information the commissioner of revenue may reasonably require on forms prescribed by the commissioner.

(c) On March 1, the insurer shall pay any additional amount due for the preceding calendar year; if there has been an overpayment, the overpayment may be credited without interest on the estimated tax due April 15.

(d) If unpaid by this date, penalties as provided in section 289A.60, subdivision 1, as related to withholding and sales or use taxes, shall be imposed.

#### Sec. 28. STATUS OF EXEMPT RULES.

Notwithstanding Minnesota Statutes, section 14.387, the following statutes, and any rules adopted or determinations, actions, or positions taken pursuant to these statutes, have the force and effect of law on and after July 1, 1997: Minnesota Statutes, sections 124.2131, subdivision 1, paragraph (b); 270.75, subdivision 5; 270.76; 270.79, subdivision 4, paragraph (f); 290.06, subdivision 2d; 290A.04, subdivision 6; and 297E.15, subdivision 11.

#### Sec. 29. EFFECTIVE DATES.

Sections 1, 3, 4, 6, 8 to 12, 14 to 16, 22, 25, 26, and 28 are effective the day following final enactment.

Sections 2, 13, and 27 are effective for all payments due after December 31, 1997.

Sections 5 and 23 are effective for orders of assessment issued on or after the day following final enactment.

Section 7 is effective for causes of action arising before the day following final enactment which are not barred by the statute of limitations as of that date, and for causes of action arising thereafter.

Sections 17 and 18 are effective for mortgages submitted for recording and deeds executed and delivered after June 30, 1997.

Section 19 is effective for returns for amounts withheld for periods after December 31, 1997.

Section 20 is effective for tax payments for the taxable years beginning after December 31, 1997.

Section 21 is effective for withholding on wages after December 31, 1997.

New language is indicated by underline, deletions by ~~strikeout~~.

Section 24 is effective for claims for refund filed on or after the day following final enactment.

Presented to the governor May 1, 1997

Signed by the governor May 2, 1997, 3:25 p.m.

## CHAPTER 85—S.F.No. 1

*An act relating to welfare reform; establishing the Minnesota family investment program—statewide and work first program pilot projects; making changes to public assistance programs; making technical changes; making program integrity initiatives; amending Minnesota Statutes 1996, sections 13.46, subdivisions 1 and 2; 13.82, subdivision 1; 84.98, subdivision 3; 136A.125, subdivision 2; 196.27; 237.70, subdivision 4a; 254B.02, subdivision 1; 256.01, subdivisions 2 and 4a; 256.017, subdivisions 1, 2, and 4; 256.019; 256.031, subdivision 5, and by adding a subdivision; 256.033, subdivisions 1 and 1a; 256.045, subdivision 3; 256.046; 256.736, subdivision 3a; 256.74, subdivision 1, and by adding a subdivision; 256.81; 256.82, subdivision 2; 256.935, subdivision 1; 256.9354, by adding a subdivision; 256.98, subdivisions 1, 4, and 8; 256.981; 256.983, subdivisions 1 and 4; 256.984, subdivision 1; 256.986; 256.9861, subdivisions 1, 2, 4, and 5; 256B.055, subdivisions 3, 5, and by adding a subdivision; 256B.056, subdivisions 1a, 3, and 4; 256B.057, subdivisions 1, 1b, and 2b; 256B.06, subdivision 4, and by adding a subdivision; 256B.062; 256D.01, subdivisions 1, 1a, and 1e; 256D.02, subdivisions 6 and 12a; 256D.03, subdivision 3; 256D.05, subdivisions 1, 2, 5, 7, and 8; 256D.051, subdivisions 1a, 2a, 3a, and by adding a subdivision; 256D.055; 256D.06, subdivision 2; 256D.08, subdivisions 1 and 2; 256D.09, subdivision 6, and by adding a subdivision; 256D.435, subdivision 3; 256D.44, subdivision 5; 256E.03, subdivision 2; 256E.06, subdivisions 1 and 3; 256E.07, subdivision 1; 256E.08, subdivision 3; 256F.05, subdivision 5; 256G.01, subdivision 4; 256G.03, subdivision 2; 256G.05, subdivision 2; 257.3573, subdivision 2; 259.67, subdivision 4; 260.38; 268.0111, subdivisions 5 and 7; 268.0122, subdivision 3; 268.552, subdivision 5; 268.6751, subdivision 1; 268.676, subdivision 1; 268.86, subdivision 2; 268.871, subdivision 1; 268.90, subdivision 2; 268.916; 268.95, subdivision 4; 270A.03, subdivision 5; 388.23, subdivision 1; 393.07, subdivisions 6 and 10; 477A.0122, subdivision 2; and 550.37, subdivision 14; proposing coding for new law in Minnesota Statutes, chapters 256; 256B; and 256D; proposing coding for new law as Minnesota Statutes, chapters 256J; and 256K; repealing Minnesota Statutes 1996, sections 256.12, subdivisions 9, 10, 14, 15, 19, 20, 21, 22, and 23; 256.72; 256.73, subdivisions 1, 1a, 1b, 2, 3a, 3b, 5, 5a, 6, 8, 8a, 9, 10, and 11; 256.7341; 256.7351; 256.7352; 256.7353; 256.7354; 256.7355; 256.7356; 256.7357; 256.7358; 256.7359; 256.736, subdivisions 16 and 18; 256.7365, subdivisions 1, 2, 3, 4, 5, 6, 7, and 9; 256.7366; 256.737; 256.738; 256.7381; 256.7382; 256.7383; 256.7384; 256.7385; 256.7386; 256.7387; 256.7388; 256.739; 256.74, subdivisions 1, 1a, 1b, 2, and 6; 256.745; 256.75; 256.76, subdivision 1; 256.78; 256.80; 256.81; 256.84; 256.85; 256.86; 256.863; 256.871; 256.8711; 256.879; 256D.02, subdivision 5; 256D.0511; and 256D.065.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

New language is indicated by underline, deletions by ~~strikeout~~.