

CHAPTER 8092
DEPARTMENT OF REVENUE
WITHHOLDING

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8092.0100 PAYROLL PERIOD.

Subpart 1. **Definition.** The term “payroll period” means the period of service for which a payment of wages is ordinarily made to an employee by the employer. It is immaterial that the wages are not always paid at regular intervals. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but if for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; or if, instead, that employee is sent on a three-week trip by the employer and receives at the end of the trip a single wage payment for three weeks’ services, the payroll period is still the calendar week, and the wage payment shall be treated as though it were three separate weekly wage payments.

Subp. 2. **Limitation on number of payroll periods.** For the purpose of Minnesota Statutes, section 290.92, an employee can have but one payroll period with respect to wages paid by any one employer. Thus, if an employee is paid a regular wage for a weekly payroll period and in addition thereto is paid supplemental wages (for example, bonuses) determined with respect to a different period, the payroll period is the weekly payroll period.

Subp. 3. **Miscellaneous payroll period.** The term “miscellaneous payroll period” means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.0200 EMPLOYEE.

Subpart 1. **Definition.** The term “employee” includes every individual performing services if the relationship between the individual and the person for whom the individual performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

Subp. 2. **Employer-employee relationship.** Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is

an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, the individual is not an employee.

Subp. 3. **Exceptions.** Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

Subp. 4. **Determination of relationship.** Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

Subp. 5. **Description of relationship.** If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

Subp. 6. **Examples of employees.** All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in the capacity as such is not an employee of the corporation.

Subp. 7. **Wages of employees.** Although an individual may be an employee under this part, the individual's services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of Minnesota Statutes, section 290.92, subdivision 1.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.0300 EMPLOYER.

Subpart 1. **Definition.** The term "employer" means any person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.

Subp. 2. **Time of performance.** It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer exist. Thus, for purposes of withholding, a person for whom an individual has performed past services for which the individual is still receiving wages from such person is an "employer."

Subp. 3. **Examples of employers.** An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

Subp. 4. **Exempt employers.** The term "employer" embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the governments of the United States, the states, territories, and the District of Columbia, including their agencies, instrumentalities, and political subdivisions.

Subp. 5. **Control of wages.** If the person for whom the services are or were performed does not have legal control of the payment of wages for such services, the

term “employer” means (except for the purpose of the definition of “wages”) the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by a trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the “employer.”

Subp. 6. Purpose. It is a basic purpose to centralize in the employer the responsibility for withholding, returning, and paying the tax, and for furnishing the statements required under Minnesota Statutes, section 290.92. The special definition of the term “employer” in subpart 5 is designed solely to meet unusual situations. It is not intended as a departure from the basic purpose.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.0400 REQUIREMENT OF WITHHOLDING.

Subpart 1. Alternative methods. Minnesota Statutes, section 290.92, subdivision 2, provides alternative methods, at the election of the employer, for use in computing the income tax to be collected at source on wages. Under the wage bracket method (see Minnesota Statutes, section 290.92, subdivision 2, clause (3)) the employer is required to deduct and withhold a tax in accordance with the tables prepared by the commissioner. The commissioner may authorize under the provisions of Minnesota Statutes, section 290.92, subdivision 2, clause (7), the employer to withhold the tax on the basis of the employee’s average estimated wages with necessary adjustments for any quarter. Before using this method the employer must receive authorization from the commissioner. Applications to use such method must be accompanied by evidence establishing the need for such method.

Subp. 2. Method of collection. The employer is required to collect the tax by deducting and withholding the amount thereof from the employee’s wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by the employee at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to the employee so that they may be drawn upon at any time, and their payment brought within the employee’s own control and disposition.

Subp. 3. Wages other than money. An employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds) and to pay over the tax in money. If the wages are paid in property other than money, the employer should make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment in money.

Subp. 4. Withholding by other than employer. As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of an employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the employer.

Subp. 5. Withholding; trust fund. The amount of any tax withheld and collected by the employer is a special fund in trust for the state of Minnesota.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.0500 WAGE BRACKET WITHHOLDING.

Subpart 1. **General.** The employer may elect to use the wage bracket method provided in Minnesota Statutes, section 290.92, subdivision 2, clause (3), with respect to any employee. The tax computed under the wage bracket method shall be the tax required to be deducted and withheld under Minnesota Statutes, section 290.92. Wage bracket withholding tables for weekly, semimonthly, monthly, and daily or miscellaneous payroll periods have been prepared by the commissioner and are available for distribution in a separate publication.

Subp. 2. **Established payroll periods other than daily or miscellaneous.** The wage bracket withholding tables referred to above for established payroll periods other than daily or miscellaneous should be used in determining the tax to be withheld for any such period without reference to the time the employee is actually engaged in the performance of services during such payroll period.

Subp. 3. **Periods to which the table for daily or miscellaneous payroll period is applicable.** The table applicable to a daily or miscellaneous payroll period shows the tax on the amount of wages for one day. Where the withholding is computed under the rules applicable to a miscellaneous payroll period, the wages and the amounts shown in the table must be placed on a comparable basis. This may be accomplished by reducing the wages paid for the period to a daily basis by dividing the total wages by the number of days (including Sundays and holidays) in the period. The amount of the tax shown in the table as the tax required to be withheld from the wages, as so reduced to a daily basis, should then be multiplied by the number of days (including Sundays and holidays) in the period.

If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld under the wage bracket method shall be the amount applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) in the period with respect to which such wages are paid.

If wages are paid to an employee without regard to any particular period, as, for example, commissions paid to a salesperson upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) which have elapsed, beginning with the latest of the following days:

A. the first day after the last payment of wages to such employee by such employer in the calendar year;

B. the date on which such individual's employment with such employer began in the calendar year; or

C. January 1 of such calendar year, and ending with (and including) the date on which such wages are paid.

Subp. 4. **Period or elapsed time less than one week.** It is the general rule that if wages are paid for a payroll period or other period of less than one week, the tax to be deducted and withheld under the wage bracket method shall be the amount computed for a daily payroll period, or for a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period, or other period, for which such wages are paid. In the case of wages paid without regard to any period, if the elapsed time computed as provided in subpart 3 is less than one week, the same rule is applicable.

Subp. 5. **Rounding off of wage payment.** In determining the amount to be deducted and withheld under the wage bracket method the wages may, at the election of the employer, be computed to the nearest dollar, provided such wages are in excess of the highest wage bracket of the applicable table. For the purpose of the computation to the

nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.0600 ADDITIONAL WITHHOLDING.

In addition to the tax required to be deducted and withheld in accordance with the provisions of Minnesota Statutes, section 290.92, the employer and employee may agree that an additional amount shall be withheld from the employee's wages.

The amount deducted and withheld pursuant to an agreement between the employer and employee shall be considered as tax required to be deducted and withheld under Minnesota Statutes, section 290.92. All provisions of law and rules applicable with respect to the tax required to be deducted and withheld under Minnesota Statutes, section 290.92 shall be applicable with respect to any amount deducted and withheld pursuant to the agreement.

Statutory Authority: *MS s 290.52*

8092.0700 SUPPLEMENTAL WAGE PAYMENTS.

Subpart 1. In general. An employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. When such supplemental wages are paid (whether or not at the same time as the regular wages) the amount of the tax required to be withheld shall be determined in accordance with this subpart or subpart 2.

The supplemental wages, if paid concurrently with wages for a payroll period, shall be aggregated with the wages paid for such payroll period. If not paid concurrently, the supplemental wages shall be aggregated with the wages paid or to be paid within the same calendar year for the last preceding payroll period or for the current payroll period. The amount of tax to be withheld shall be determined as if the aggregate of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

In cases where supplemental wages are not paid concurrently with wages for a payroll period the employer may determine the amount of tax required to be withheld in accordance with this paragraph rather than in accordance with the provisions of the previous paragraph. In such a case the withholding of tax on such supplemental payments shall be at the rate of four percent as if no exemption had been claimed.

Subp. 2. Special rule where aggregate withholding exemption exceeds wages paid. If supplemental wages are paid to an employee during a calendar year for a period which involves two or more consecutive payroll periods, for which other wages also are paid during such calendar year, and the aggregate of such other wages is less than the aggregate of the amounts determined under the table furnished by the commissioner as the withholding exemptions applicable for such payroll periods, the amount of the tax required to be withheld on the supplemental wages shall be computed as follows:

A. Step 1. Determine an average wage for each of such payroll periods by dividing the sum of the supplemental wages and the wages paid for such payroll periods by the number of such payroll periods.

B. Step 2. Determine a tax for each payroll period as if the amount of the average wage constituted the wages paid for such payroll period.

C. Step 3. From the sum of the amounts of tax determined in step 2 subtract the total amount of tax withheld, or to be withheld, from the wages, other than the supplemental wages, for such payroll periods. The remainder, if any, shall constitute the amount of the tax to be withheld upon the supplemental wages.

The rules prescribed in this subpart shall, at the election of the employer, be applied in lieu of the rules prescribed in subpart 1 except that this subpart shall not be

applicable in any case in which the payroll period of the employee is less than one week.

Subp. 3. **Vacation allowances.** Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the rules applicable with respect to supplemental wage payments shall apply to such vacation allowance.

Statutory Authority: *MS s 290.52*

8092.0800 WAGES PAID FOR PAYROLL PERIOD OF MORE THAN ONE YEAR.

If wages are paid to an employee for a payroll period of more than one year, for the purpose of determining the amount of tax required to be deducted and withheld in respect of such wages, the amount of the tax shall be determined as if such payroll period constituted a miscellaneous payroll period of 365 days.

Statutory Authority: *MS s 290.52*

8092.0900 WAGES PAID THROUGH AN AGENT, FIDUCIARY, OR OTHER PERSON ON BEHALF OF TWO OR MORE EMPLOYERS.

If a payment of wages is made to an employee by an employer through an agent, fiduciary, or other person who also has control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the amount of tax required to be withheld on each wage payment made through such agent, fiduciary or person shall, whether the wages are paid separately on behalf of each employer or paid in a lump sum on behalf of all such employers, be determined upon the aggregate amount of such wage payment or payments in the same manner as if such aggregate amount had been paid by one employer.

In any such case, each employer shall be liable for the return and payment of a pro rata portion of the tax so determined, such portion to be determined in the ratio which the amount contributed by the particular employer bears to the aggregate of such wages.

For example, three companies maintain a central management agency which carries on the administrative work of the several companies. The central agency organization consists of a staff of clerks, bookkeepers, stenographers, etc., who are the common employees of the three companies. The expenses of the central agency, including wages paid to the foregoing employees, are borne by the several companies in certain agreed proportions. company X pays 45 percent, company Y pays 35 percent, and company Z pays 20 percent of such expenses. The amount of the tax required to be withheld on the wages paid to persons employed in the central agency should be determined in accordance with the provisions of this section. In such event, company X is liable as an employer for the return and payment of 45 percent of the tax required to be withheld. Company Y is liable for the return and payment of 35 percent of the tax and company Z is liable for the return and payment of 20 percent of the tax.

Statutory Authority: *MS s 290.52*

8092.1000 [Repealed, L 2003 c 127 art 3 s 24]

8092.1100 LIABILITY FOR TAX.

Every employer required to deduct and withhold the tax under Minnesota Statutes, section 290.92, from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee by the employer. If, for example, the employer deducts less than the correct amount of tax, or fails to deduct any part of the tax, the employer is nevertheless liable for the correct amount of the tax. See, however,

2092 (6). The employer is relieved of liability to any other person for the amount of any such tax withheld and paid to or deposited with the commissioner.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.1200 REMUNERATION OTHER THAN IN CASH FOR SERVICE PERFORMED BY RETAIL COMMISSION SALESPERSON.

Subpart 1. **In general.** An employer, in computing the amount to be deducted and withheld as tax in accordance with Minnesota Statutes, section 290.92, may elect to disregard any wages paid, after October 1, 1961, in a medium other than cash for services performed by an employee if the noncash remuneration is paid for services performed by the employee as a retail commission salesperson, and the employer ordinarily pays the employee remuneration solely by way of cash commissions for services performed as a retail commission salesperson.

Minnesota Statutes, section 290.92, subdivision 10, and this part are not applicable with respect to noncash wages paid to a retail commission salesperson for services performed in a capacity other than as such a salesperson. Such parts are not applicable with respect to noncash wages paid by an employer to an employee for services performed as a retail commission salesperson if the employer ordinarily pays the employee remuneration other than by way of cash commissions for such services. Thus, noncash remuneration may not be disregarded in computing the amount to be deducted and withheld in a case where the employee, for services performed as a retail commission salesperson, is paid both a salary and cash commissions on sales, or is ordinarily paid in something other than cash (stocks, bonds, or other forms of property) notwithstanding that the amount of remuneration paid to the employee is measured by sales.

Subp. 2. **Retail commission salesperson.** For purposes of Minnesota Statutes, section 290.92, subdivision 10, and this part, the term "retail commission salesperson" includes an employee who is engaged in the solicitation of orders at retail, that is, from the ultimate consumer, for merchandise or other products offered for sale by the employee's employer. The term does not include an employee salesperson engaged in the solicitation on behalf of an employer of orders from wholesalers, retailers, or others for merchandise for resale. However, if the salesperson solicits orders for more than one principal, the salesperson is not excluded from the term solely because he or she solicits orders from wholesalers or retailers on behalf of one or more principals. In such case the salesperson may be a retail commission salesperson with respect to services performed for one or more principals and not with respect to services performed for the other principals.

Subp. 3. **Noncash remuneration.** The term "noncash remuneration" includes remuneration paid in any medium other than cash, such as goods or commodities, stocks, bonds, or other forms of property. The term does not include checks or other monetary media of exchange.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8092.1300 FILING AND PAYMENT OF WITHHELD TAX.

For purposes of determining the timeliness of withholding tax payments, returns, or deposits under Minnesota Statutes, section 290.92, subdivision 6, clause (1), the payment, return, or deposit shall be treated as having been made on the earlier of the following dates:

A. the date actually received by the Department of Revenue; or

B. the date of mailing, but only if the payment, return, or deposit was mailed on or before the day prior to the due date, including any extension of time granted for making the payment, return, or deposit.

The person required to make the payment, return, or deposit shall have the burden of establishing that the payment, return, or deposit was timely mailed in the United States by United States mail in an envelope or other appropriate wrapper, postage prepaid, and properly addressed.

Statutory Authority: *MS s 290.52*

8092.1400 ANNUAL RETURNS.

Subpart 1. **General rule.** If an employer deducts and withholds an amount required by Minnesota Statutes, chapter 290, for a base year and the amount required is \$500 or less, the employer, for the qualifying year, may elect to file an annual return and make an annual payment of the amount required to be deducted and withheld in that calendar year and is thereafter relieved from filing quarterly returns and making quarterly payments. The annual return and payment are due on or before February 28 of the calendar year following the calendar year the amounts were deducted and withheld. The annual return will serve as the reconciliation required in Minnesota Statutes, section 289A.09, subdivision 2, paragraph (d), for those employers who have elected to file an annual return. The Department of Revenue, applying the criteria of this part, will annually determine which employers are eligible to file an annual return and notify those employers who qualify. Employers who have not filed all withholding tax returns required for the base year are not eligible to file an annual return. Only those employers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible employers may still elect to file returns and make deposits quarterly. Employers who make such election are required to make all returns and deposits required by Minnesota Statutes, chapter 289A, and will be subject to all applicable penalties.

Subp. 2. **Base year.** "Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all employers withholding tax for that period. The first base year is the four-consecutive quarter period beginning January 1990 and ending December 1990.

Subp. 3. **Qualifying year.** "Qualifying year" means the calendar year for which the Department of Revenue notifies the employer that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 4. **Accelerated deposits.** If, at the end of any calendar month other than the last month of the calendar year, the aggregate amount of undeposited withholding tax withheld by an employer who has elected to file an annual return exceeds \$500, the employer must deposit the aggregate amount with the Department of Revenue within 30 days after the close of the calendar month.

Notwithstanding any other provision of this part, employers are subject to the eighth-monthly period deposit requirements of Minnesota Statutes, section 289A.20.

In the event an employer who has elected to file an annual return pursuant to this part permanently ceases to pay wages for which withholding of tax is required, the employer must file a final return and deposit any undeposited tax on or before the last day of the month following the month in which the discontinuance of such activity occurred.

Subp. 5. **Maximum withholding amount.** The commissioner of revenue shall annually recalculate the maximum withholding amount for annual filing, using the percentage calculated pursuant to Minnesota Statutes, section 290.06, subdivision 2d, paragraph (b). If the maximum withholding amount so calculated is more than \$100 above the maximum withholding amount for annual filing then in effect, the maximum withholding amount for annual filing must be increased by \$100. If the maximum withholding amount so calculated is less than \$100 above the maximum withholding amount then in effect, there shall be no change in the maximum withholding amount then in effect. When the maximum withholding amount is adjusted by the commission-

er under this subpart, the maximum withholding amounts referred to in subparts 1 and 4 must be adjusted by the same amount by the commissioner.

Statutory Authority: *MS s 270.06*

History: *16 SR 444*

STATE CONTRACTORS

8092.2000 CONTRACTS WITH STATE; WITHHOLDING; CERTIFICATION.

Minnesota Statutes, section 290.97 provides that no department of the state of Minnesota nor any political or governmental subdivision thereof shall make final settlement with any contractor, under a contract requiring the employment of employees for wages by said contractor, until satisfactory showing is furnished to said department or governmental subdivision that the contractor in question has complied with the withholding provisions of Minnesota Statutes, section 290.92. The statute further provides that a certificate issued by the commissioner of revenue shall satisfy this requirement.

The provisions of the statute are prospective in their effect and apply only to contracts executed after April 7, 1961. To facilitate the obtaining of the certification provided for by Minnesota Statutes, section 290.97 the commissioner has made available form 134. This form is in two parts, the first section thereof is in the form of an affidavit to be executed by a prime contractor or subcontractor and the second portion thereof is the commissioner's certification. The affidavit portion of the form in any event requires that certain identifying information be set forth by the affiant such as the name of the contractor, the address, withholding identification number, the number of the contract or contracts involved and the name of the department of the state or governmental subdivision with whom the contractor has contracted. The affidavit itself is divided into two parts A and B and it is intended that part A will be executed by both a prime contractor or subcontractor with respect to the employees of such prime contractor or subcontractor.

Part B of said affidavit is to be executed only by a prime contractor who has utilized subcontractors in completing a contract with the state or governmental subdivision thereof. In such a case it is contemplated that each subcontractor will execute part A of the affidavit on form 134 and obtain from the commissioner certification with respect to such subcontractor's own employees. This copy of form 134 certified to with respect to the subcontractor's employees will be given to the prime contractor who should keep such affidavit and certification in the prime contractor's own files. When the prime contractor has received such an affidavit and certification from all of the subcontractors on the contract, the prime contractor will then be in a position to execute part B of the affidavit as well as part A and obtain a certification from the commissioner as to the prime contractor's own employees. This form 134, when both parts A and B have been executed by the prime contractor and certified to by the commissioner, should then be delivered to the department or governmental subdivision in satisfaction of the requirements of Minnesota Statutes, section 290.97.

The withholding section of the Department of Revenue will process these affidavits and any requests for forms 134 or inquiries relative to their use and application should be directed to this part.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*