

S.F. No. 2346 – Exclusion from gross income for certain nonresidents; exemption from certain withholding requirements

Author: Senator Ann H. Rest

Prepared by: Nora Pollock, Senate Counsel (651/297-8066)

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Under current law, nonresidents are required to file a Minnesota income tax return if their Minnesota gross income for services performed or income earned in Minnesota equals or exceeds a threshold amount (for 2022, the amount was \$12,900). Generally, employers who employ individuals who work in Minnesota are required to withhold federal and state income taxes if an employee meets the income tax filing threshold. This bill provides an exclusion from gross income for certain nonresident employees, as defined in the bill, and exempts certain employers from withholding requirements for nonresident employees.

Section 1. Income of certain nonresidents.

Subd. 1. Exemption allowed. Provides that compensation received by a qualifying nonresident for employment in Minnesota is excluded from gross income, subject to later provisions in the bill.

Subd. 2. Definitions. Provides definitions relevant to the exemption. In pertinent part:

“Qualifying nonresident individual” means an individual:

- (1) whose residence, place of abode, and place customarily returned to at least once a month is in another state;
- (2) who is paid wages for employment duties, excluding duties performed as an entertainer, in Minnesota on 30 or fewer days in the taxable year;
- (3) who performed employment duties in more than one state during the calendar year; and
- (4) whose state of residence provides a substantially similar exclusion or does not impose an individual income tax, or whose income is otherwise exempt from tax.

Subd. 3. Withholding exemption; limitation. Exempts employers from the withholding requirements for qualifying nonresident individuals and related filing requirements. The exemption does not apply if the employee performs employment duties for the employer in Minnesota for more than 30 days in the calendar year, in which case the withholding and

filing requirements apply for every day, including the first 30 days, that the employee performed employment duties in Minnesota for that year.

Subd. 4. Employers; application of penalties. Prohibits the application of penalties or interest otherwise applicable for an employer who fails to deduct and withhold income taxes, if the employer met one of two conditions when determining whether withholding was required:

- the employer maintained a time and attendance system and relied on data from that system; or
- if the employer did not maintain a time and attendance system, the employer relies on either:
 - the employer's own records maintained in the regular course of business of the employer's location or
 - the employee's reasonable determination of the time the employee expected to spend performing employment duties in Minnesota, the employer has no actual knowledge of fraud by the employee in making the determination, and the employer and employee did not collude to evade taxation.

Subd. 5. Timing of employment duties performed. Provides that an employee is deemed to be performing employment duties in Minnesota for a day if the employee performs more of their employment duties in Minnesota than in any other state during that day, excluding travel time.

Subd. 6. Severability. States that if any provision in this section or application of a provision in this section is found unconstitutional, then all other provisions and related rights, remedies, and privileges remain valid.

Effective for taxable years beginning after December 31, 2023.