

LEGISLATIVE BILL 896

Approved by the Governor April 7, 1990

Introduced by Withem, 14; Hartnett, 45; Rogers, 41;
Lynch, 13

AN ACT relating to revenue and taxation; to amend section 77-2753, Revised Statutes Supplement, 1988; to provide for the Tax Commissioner to enter into an agreement with the United States Office of Personnel Management to withhold income tax on certain federal annuity payments as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 77-2753, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2753. (1) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection ~~(4)~~ (5) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages.

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal

services performed or to be performed within this state to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation or partnership described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be three and fifteen-hundredths percent, and for all other payments, the percentage shall be five percent.

(c) For any corporation or partnership that receives compensation for personal services in this state and of which all or substantially all of the shareholders or partners are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not apply to any payment to a nonresident alien, corporation, or partnership if such individual, shareholder, or partner provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States.

(3) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of

anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(4) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

~~(4)~~ (5) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. 3405 or 3406, (b) payments of gambling winnings, or (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments.

Sec. 2. That original section 77-2753, Revised Statutes Supplement, 1988, is repealed.