

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Note - There are Two separate Rules in this pocket (+ three SNRs)

AVK
~~1-20-93~~
1-22-93

RULE REVIEW CHECKLIST

File No. 1995

DATE RECEIVED 1-20-93

REVIEW DATE 1-29-93

DUE DATE 2-3-93

~~(DIS)~~APPROVED 2-3-93

WITHDRAWN _____

Docket No. 05.0009.0739

ADOPTED W/O HEARING _____

EMERGENCY RULE _____

TO REVISOR ON ~~1-20-93~~ 1-22-93

REVISOR (DIS)APPROVED 1-26-93

FILED W/SEC. OF STATE 2-4-93

RETURNED TO AGENCY 2-4-93

✓ Rule as adopted (4 copies)

_____ Notice to ~~Solicit~~ Outside Information/Opinion (if applicable)

_____ Date published in State Register

_____ Comments

_____ ~~Petition for Adoption~~ of a Rule

_____ ~~Board's Authorizing~~ Resolution

_____ Date adopted

✓ Proposed Rule

_____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

270.06 (13) Statutory Authority

~~statement~~ Small Business Statement

~~statement~~ Expenditure of public money statement

October 26, 1992 Signature

✓ Statement of Need and Reasonableness (if applicable) Bad

_____ Small Business Statement

_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

November 2, 1992 Dated 30/25 days before adoption

_____ Notice attached indicates it is attached

_____ Copy of rule or summary attached

✓ Publication in State Register

November 9, 1992 Date 30/25 days before adoption

_____ 180-day deadline from:

no see notes Effective date of law requiring rule (14.12) (both rules) amendments don't apply

✓ end of comment period (§ 14.26) (rules without hearing)

_____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~

_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

12-11-92 Date

NA Written Requests, Submissions or Comments

✓ Declaration of Attorney

Barry Feller Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

STATE OF MINNESOTA

Office of the Attorney General

TO : JASON P. HARDY
Appeals, Legal Services, and Criminal Investigations Division
10 River Park Plaza
St. Paul

DATE : February 4, 1993

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Rule Relating to Orders of Assessment and Returns Made by the Commissioner and the Adopted Rule Relating to Amended Returns

The above-referenced rules have been approved as to their legality by the Attorney General on February 3, 1993.

Enclosed are your copies of the approved rules. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rules. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

Enclosures
cc: Barry R. Greller
William Brown, Chief Judge
MaryAnn Hruby

AVK:jj.rules.bg3

Department of Revenue

Adopted Permanent Rules Relating to Orders of Assessment and Returns Made by the Commissioner

Rules as Adopted

8160.0620 RETURNS MADE BY COMMISSIONER.

Subpart 1. **Making returns.** If a taxpayer fails to file a required return, the commissioner may make a return for the taxpayer under Minnesota Statutes, section 289A.35. For the purposes of this part, the terms in items A and B have the meanings given.

A. A "commissioner filed return" means a return made by the commissioner under Minnesota Statutes, section 289A.35.

B. The "filing date" of a commissioner filed return means the date the commissioner filed return is signed by the commissioner.

Subp. 2. **Status of commissioner filed return and taxpayer's return.** A commissioner filed return is prima facie correct and valid when filed, but the filing of a commissioner filed return does not satisfy the taxpayer's obligation to file a return.

If, after a commissioner filed return has been filed, the taxpayer files a return, the commissioner will allow the tax shown on the taxpayer's return to establish the taxpayer's current tax liability (except where the commissioner filed return is on judicial appeal or the tax liability has been adjudicated).

Subp. 3. **Adjusting the commissioner filed return.** Anytime before the taxpayer files a return, the commissioner may adjust the commissioner filed return by making a subsequent commissioner filed return or by issuing an order of assessment. After the taxpayer has filed a return, the commissioner may not adjust the tax liability shown on that return by making a commissioner filed return. To adjust the taxpayer's return, the

commissioner must issue an order of assessment.

Subp. 4. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the filing date of a commissioner filed return. The period of limitation for assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 5. **Appealing a commissioner filed return.** A taxpayer cannot administratively appeal the tax liability shown on a commissioner filed return. However, the commissioner may determine, based on information supplied by the taxpayer, that the taxpayer is not required to file.

The taxpayer may appeal the requirement to file or the tax liability shown on a commissioner filed return to tax court under Minnesota Statutes, section 271.06. An appeal to the tax court must be made within 60 days from the filing date of the commissioner filed return.

Subp. 6. **Interest and penalties.** During the period in which the taxpayer may appeal a commissioner filed return to tax court and while an appeal is pending, interest under Minnesota Statutes, section 289A.55, subdivision 2, and penalties under Minnesota Statutes, section 289A.60, subdivisions, 1, 2, and 3, continue to accrue.

Subp. 7. **Collection.** The periods of limitation for collection of tax shown on a commissioner filed return begin to run on the filing date of the commissioner filed return. The filing date constitutes the date of assessment of the tax.

If, after a commissioner filed return has been filed, the commissioner or the taxpayer assesses tax and the tax shown on that subsequent assessment is less than or equal to the amount of tax shown on the commissioner filed return, the date of assessment of the commissioner filed return remains in effect. If the amount of tax shown on a subsequent assessment is greater than the amount shown on the commissioner filed return, the date of assessment for the tax in excess of the amount shown on the commissioner filed return is the date of the subsequent assessment.

8160.0630 ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED.

Subpart 1. **Sending an order of assessment.** If a taxpayer fails to file a required return, the commissioner may send an order of assessment to the taxpayer under Minnesota Statutes, section 289A.37.

Subp. 2. **Status of the order of assessment and the taxpayer's return.** An order of assessment establishes the taxpayer's tax liability. The taxpayer, in any related action or proceeding, has the burden of establishing the incorrectness or invalidity of the order of assessment. The sending of an order of assessment does not satisfy the taxpayer's obligation to file a return. If the taxpayer files a return after an order of assessment has been sent, the taxpayer's obligation to file a return is satisfied, but the taxpayer's return does not establish a new tax liability (except to the extent that the tax shown on the taxpayer's return exceeds the tax shown on the order of assessment).

Subp. 3. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the date of the order of assessment. The period of limitations on assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 4. **Appealing the order of assessment.** A taxpayer may obtain reconsideration of an order of assessment through administrative review under Minnesota Statutes, section 289A.65, or may appeal to the tax court under Minnesota Statutes, section 271.06. If the taxpayer has not filed a return for the period for which administrative review is requested and the requirement to file is not in dispute, the taxpayer's written administrative appeal must include a return.

If the taxpayer fails to file a timely administrative appeal or a timely appeal to tax court, the taxpayer must pay the tax in full, but may file a claim for a refund under Minnesota Statutes, section 289A.50. If the taxpayer has not

filed a return for the period for which a refund is claimed, a return must be filed as part of the refund claim.

Subp. 5. **Interest and penalties.** Interest under Minnesota Statutes, section 289A.55, subdivision 2, continues to accrue during the periods allowed for administrative review, appeal to tax court, and payment. Penalties for failure to make and file a return under Minnesota Statutes, section 289A.55, subdivision 2, continue to accrue until the taxpayer files a return. Penalties for failure to pay tax under Minnesota Statutes, section 289A.60, subdivision 1, are suspended from the date of the order of assessment to the date that the amount shown on the order must be paid to the commissioner. After this period expires, penalties for failure to pay tax start to accrue again based on the number of days the tax is not paid before the date of the order of assessment and the number of days the tax is not paid after the period for payment expires.

Subp. 6. **Collecting the assessment.** The periods of limitation on collection begin to run on the date of the order of assessment.

If, through administrative review or tax court appeal, the taxpayer meets the burden of establishing the invalidity of the order of assessment and the tax liability determined on review or appeal is less than or equal to the amount of tax shown on the order of assessment, the date of assessment remains the date of the order of assessment.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 04 1993

Joan Anderson Growe
Secretary of State

9:50 AM

RA

APPROVED AS TO FORM AND LEGALITY

2-3 19 93

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Amy V. Kindseth
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Revenue

Adopted Permanent Rules Relating to Amended Returns

Rules as Adopted

8160.0300 AMENDED RETURNS.

Subpart 1. **Application.** This part applies only to income, corporate franchise, and estate taxes under Minnesota Statutes, chapters 290 and 291.

Subp. 2. **Effect of filing more than one return before the due date.** If more than one return for a single taxable period is filed by the date prescribed for filing the return (without regard to any extensions), the last return filed by the due date supersedes the previous return or returns. The last return filed by the due date is the taxpayer's original return for the taxable period and is not an amended return.

Subp. 3. **Effect of amended returns.** If a taxpayer files an amended return showing tax which is greater than the tax shown on the most recent assessment, the amended return constitutes an assessment which establishes the taxpayer's liability.

If a taxpayer files an amended return showing tax which is less than the tax shown on the most recent assessment, the amended return constitutes a claim for refund under Minnesota Statutes, section 289A.50. Before a claim for refund can be processed, the taxpayer must pay the tax as assessed prior to the claim for refund. The commissioner, however, may use the information contained in the claim for refund to adjust the previous assessment as long as the statute of limitations for adjusting that assessment has not expired.

Subp. 4. **Date of assessment.** The date of assessment of the additional tax shown on the taxpayer's amended return is the date the commissioner receives the taxpayer's amended return.

Subp. 5. **Time limitations on assessment and collection.** The taxpayer's filing of an amended return does not alter or

extend the period of limitation for assessment of tax.

The time limitations for collection of additional tax shown on a taxpayer's amended return begin to run on the date the commissioner receives the amended return.

Subp. 6. **Interest and penalties.** The additional tax shown on a taxpayer's amended return bears interest from the date the original return was due to the date the amount of additional tax assessed by the taxpayer on the amended return is paid.

Penalties for failure to timely pay tax under Minnesota Statutes, section 289A.60, subdivision 1, begin to accrue from the date the amended return is received by the commissioner to the date the additional tax assessed by the amended return is paid.

Penalties added to the original return for failure to timely file under Minnesota Statutes, section 289A.60, subdivision 2, are recalculated using the tax liability shown on the amended return as the tax liability on which the penalties are based.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 04 1993

Joan Anderson Growe
Secretary of State 9:50 Am

RA

APPROVED AS TO FORM AND LEGALITY

2-3 19 93

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Amy V. Kvalseth
SPECIAL ASSISTANT ATTORNEY GENERAL

State of Minnesota
Department of Revenue

In the Matter of the Proposed Adoption Without a Public Hearing of Permanent Rules Governing Amended Returns

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared to establish the statutory authority, need for, and reasonableness of the proposed parts governing returns made by the commissioner, orders of assessment issued when no return has been filed, and amended returns. It is submitted pursuant to Minn. Stat. § 14.23 (1990) and Minn. Rules, part 2010.0700 (1991) requiring a Statement of Need and Reasonableness.

In preparing this Statement of Need and Reasonableness, the Department has considered this part's impact on local public bodies, agricultural land, and small businesses. The proposed part will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

Minnesota Rules, part 8160.0300, Amended Returns

In 1990, Minn. Stat. § 290.391 which related to amended returns was repealed by Minn. Laws, ch. 480, art. 1, § 45. That statute provided that taxpayers could correct errors on their returns by filing amended returns. The term "amended return" referred to both returns which made corrections that increased taxpayers' liabilities and returns which made corrections that decreased taxpayers' liabilities. The statute, however, also stated that amended returns that decreased taxpayers' liabilities constituted claims for refund under Minn. Stat. § 290.50 (repealed 1990).

Currently, there is no provision directly analogous to Minn. Stat. § 290.391 (repealed 1990). Claims for refund are now governed exclusively by Minn. Stat. § 289A.50 (1990). Administratively, the Department allows taxpayers to correct errors which do not constitute claims for refund by filing amended returns (except where a

taxpayer files an amended federal return, in which case the taxpayer is required to report the change. Minn. Stat. § 289A.38, subd. 7 (1990)). This practice is based on former statutory language and continued statutory reference to amended returns. (The date of assessment for an "amended return" is defined by Minn. Stat. § 270.65 (1990) and an "amended" return claiming overpayment constitutes a claim for refund under Minn. Stat. § 289A.50 (1990).)

This part is necessary to avoid any conflict between the statutory requirements relating to claims for refund and the administrative practice of accepting amended returns which do not show an overpayment.

Another related issue which this part clarifies is whether the commissioner must issue an order of assessment to establish a taxpayer's liability for any additional tax shown on an amended return. This issue has been raised by taxpayers. This part is necessary to clarify that taxpayers self-assess additional tax by filing an amended return.

Subpart Analysis.

Subpart 1. The part is limited to income, corporate franchise, and estate taxes because Minn. Stat. § 289A.50, subd. 1(b) (1990), limits the use of amended returns for claiming a refund to these tax types.

Subpart 2. The Internal Revenue Service's administrative practice requires that it accept a taxpayer's amended return if it is filed before the date prescribed for filing the original. *Haggar Co. v. Helvering*, 308 U.S. 389 (1940). The Department's adoption of this practice results in uniformity with the Internal Revenue Service practice and avoids discouraging early filing. If a taxpayer files a second return before the due date of the original return and the second return shows less tax liability than the original return, the taxpayer, without this provision, would have to follow the procedures for claiming a refund under Minn. Stat. § 289A.50 (1990) Those procedures include payment of the previously assessed tax in full.

Subpart 3. Under Minnesota law, taxpayers self-assess tax by filing returns. *See e.g.*, Minn. Stat. § 289A.08, subd. 10 (1990). It is reasonable that a correction made by a taxpayer which increases the taxpayer's liability also be accepted as a self-assessment because filing an amended return is a correction of the taxpayer's original self-assessment. Providing that a taxpayer's amended return establishes the taxpayer's liability is reasonable only in the case of additional tax, however, because allowing taxpayers to lower their liability by filing amended returns conflicts with statutory requirements for claiming a refund under Minn. Stat. § 289A.50 (1990).

Regardless of the requirements for claiming a refund under Minn. Stat. § 289A.50 (1990), the commissioner may respond to the additional information contained in an amended return claiming a refund by correcting any prior assessment. Minn. Stat. § 289A.35 (1990). A correction of this type may be made at the discretion of the commissioner, which is similar to the administrative practice of the Internal Revenue Service. *See, J.E. Riley Investment Co.*, 311 U.S. 55 (1940).

Subpart 4. This subpart restates statutory language found in Minn. Stat. § 270.65 (1990). The restatement of this language is necessary for a clear understanding of the part.

Subpart 5. Generally, the commissioner must assess tax within 3-1/2 years after the date a taxpayer files a return. Minn. Stat. § 289A.38, subd. 1 (1990). An additional assessment by the commissioner does not extend the time for assessment, so it is reasonable to conclude that a taxpayer's voluntary assessment of additional tax does not extend the time for assessment either.

Time limitations for collection run from the date of assessment. *See e.g.*, Minn. Stat. §§ 270.69 and 270.70 (1990). The date of assessment of the tax shown on an amended return is defined by Minn. Stat. § 270.65 (1990) as the date of the filing of the amended return. Since amended returns have no statutory due date, Minn. Stat. §

270.271, subd. 4 governs and the filing is the date the commissioner receives the amended return.

Subpart 6. Payment of tax is due at the time the return must be filed. Minn. Stat. § 289A.20 (1990). Since an amended return corrects an error on a prior return and payment of the amount of tax shown on the amended return should have been paid with the prior return, it is reasonable to expect payment with interest at the time the amended return is filed.

Penalties for late payment do not revert back to the original due date of the return, so that taxpayers are encouraged to correct their own mistakes by filing amended returns.

To eliminate any benefit a late filer would receive by inadvertently understating liability on a first return and subsequently filing a proper amended return, this subpart clarifies that penalties for failure to timely file are based on the final correct tax, which includes any amendments made by the taxpayer.

Department of Revenue

Proposed Permanent Rules Relating to Amended Returns

Rules as Proposed (all new material)

8160.0300 AMENDED RETURNS.

Subpart 1. **Application.** This part applies only to income, corporate franchise, and estate taxes under Minnesota Statutes, chapters 290 and 291.

Subp. 2. **Effect of filing more than one return before the due date.** If more than one return for a single taxable period is filed by the date prescribed for filing the return (without regard to any extensions), the last return filed by the due date supersedes the previous return or returns. The last return filed by the due date is the taxpayer's original return for the taxable period and is not an amended return.

Subp. 3. **Effect of amended returns.** If a taxpayer files an amended return showing tax which is greater than the tax shown on the most recent assessment, the amended return constitutes an assessment which establishes the taxpayer's liability.

If a taxpayer files an amended return showing tax which is less than the tax shown on the most recent assessment, the amended return constitutes a claim for refund under Minnesota Statutes, section 289A.50. Before a claim for refund can be processed, the taxpayer must pay the tax as assessed prior to the claim for refund. The commissioner, however, may use the information contained in the claim for refund to adjust the previous assessment as long as the statute of limitations for adjusting that assessment has not expired.

Subp. 4. **Date of assessment.** The date of assessment of the additional tax shown on the taxpayer's amended return is the date the commissioner receives the taxpayer's amended return.

Subp. 5. **Time limitations on assessment and collection.** The taxpayer's filing of an amended return does not alter or

Approved by Revisor

extend the period of limitation for assessment of tax.

The time limitations for collection of additional tax shown on a taxpayer's amended return begin to run on the date the commissioner receives the amended return.

Subp. 6. **Interest and penalties.** The additional tax shown on a taxpayer's amended return bears interest from the date the original return was due to the date the amount of additional tax assessed by the taxpayer on the amended return is paid.

Penalties for failure to timely pay tax under Minnesota Statutes, section 289A.60, subdivision 1, begin to accrue from the date the amended return is received by the commissioner to the date the additional tax assessed by the amended return is paid.

Penalties added to the original return for failure to timely file under Minnesota Statutes, section 289A.60, subdivision 2, are recalculated using the tax liability shown on the amended return as the tax liability on which the penalties are based.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Amended Returns

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8160

The attached rules are approved for
publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

MINNESOTA Department of Revenue
Appeals, Legal Services and Criminal Investigations Division
Mail Station 2220
St. Paul, MN 55146-2220
Phone (612) 296-1022
Facsimile (612) 296-8229

RECEIVED
JAN 20 1993
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
Paul, MN 55101

January 15, 1992

The Office of the Attorney General
Public Finance Division
Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103

Dear Sir or Madam:

I have enclosed the following materials related to the proposed adoption without a public hearing of permanent rules governing returns made by the commissioner, orders of assessment issued when no return has been filed, and amended returns:

(1) Copies of the proposed rules with certificates of approval as to form by the revisor of statutes attached.

(2) The notice of intent to adopt the rules without a public hearing as mailed.

(3) The statements of need and reasonableness

(4) The affidavit of mailing the notice of intent to adopt the rules without a public hearing.

(5) A copy of the notice of intent to adopt the rules without a public hearing as published in the State Register.

(6) Four copies of the rules as adopted.

(7) The findings of fact, conclusions, and order adopting the rules.

(8) The Declaration of Counsel of Barry R. Greller, Special Assistant Attorney General.

Copies of the statements of need and reasonableness were mailed to the Legislative Commission to Review Administrative Rules when they became available to the public, as required by Minn. Stat. § 14.23.

These documents are submitted for your final approval pursuant to Minn. Stat., ch. 14 and Minn. Rules, ch. 2010.

Sincerely,

Jason P. Hardy
Legal Services Section

Enclosure

Stat Authority 270.06 (13)

The Commissioner of revenue shall: administer and enforce the assessment of collection of state taxes and from time to time, make publish, and distribute rules for the administration and enforcement of state tax laws. The rules shall have the force of law.

end of comment period December 9, 1992

180 day deadline
14.12
authority is mandatory and it is new material

1-26-93 Hardy not in
left a message for Barry Gellor

B. Nonsequential Double and Collegiate Double Plate	9.75
Nonsequential Single Plate	9.00

Subp. 3. **Duplicate plates.** Duplicate plate fees apply for plates that are issued when the original plates are lost, stolen, destroyed, or otherwise become unserviceable and no new plate is issued. The duplicate plate fees are the same as for original issuance in subpart 2.

Subp. 4. **Duplicate validation sticker fees.** Duplicate validation sticker fees apply to validation stickers that are issued when the original validation stickers are lost, stolen, destroyed, or otherwise become unserviceable and no new plate is issued. The duplicate sticker fee is 50 cents per sticker.

7403.1400 INTERNATIONAL FUEL TAX AGREEMENT DECAL FEE.

The fee for original and duplicate International Fuel Tax Agreement decals is 50 cents.

REPEALER. *Minnesota Rules*, parts 7403.0100, subpart 5; 7403.0400, subpart 3; 7403.0500, subpart 2; 7403.0600, subpart 2; 7403.0700; 7403.0800, subpart 3; 7403.0900, subpart 5; 7403.1000; and 7403.1100, are repealed.

Department of Revenue

Proposed Permanent Rules Relating to Amended Returns

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, section 270.06(13).

All persons have 30 days, until 4:30 p.m. on December 9, 1992, in which to submit comment in support of or in opposition to the proposed rules or any subpart of the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on any of the rules within the 30-day comment period, by 4:30 p.m. on December 9, 1992. If 25 or more persons submit a written request for a public hearing by 4:30 p.m. on December 9, 1992, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed under *Minnesota Statutes*, sections 14.131 to 14.20. Comments or written requests for a public hearing must be submitted to:

Jason P. Hardy
Appeals, Legal Services, and Criminal Investigations Division
10 River Park Plaza — St. Paul, MN 55146-2220
Mail Station 2220 — (612) 296-1902 extension 117

The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department of Revenue and do not result in a substantial change in the proposed rules as noticed. Copies of the proposed rules are attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Jason P. Hardy upon request.

In preparing these rules, the Department has considered their affects on local public bodies, agricultural land, and small businesses. The proposed rules will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Jason P. Hardy at the address and telephone number listed above.

Dated: 26 October 1992

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Rules as Proposed (all new material)

8160.0300 AMENDED RETURNS.

Subpart 1. **Application.** This part applies only to income, corporate franchise, and estate taxes under *Minnesota Statutes*, chapters 290 and 291.

Subp. 2. **Effect of filing more than one return before the due date.** If more than one return for a single taxable period is filed by the date prescribed for filing the return (without regard to any extensions), the last return filed by the due date supersedes the previous return or returns. The last return filed by the due date is the taxpayer's original return for the taxable period and is not an amended return.

Subp. 3. **Effect of amended returns.** If a taxpayer files an amended return showing tax which is greater than the tax shown on the most recent assessment, the amended return constitutes an assessment which establishes the taxpayer's liability.

If a taxpayer files an amended return showing tax which is less than the tax shown on the most recent assessment, the amended return constitutes a claim for refund under *Minnesota Statutes*, section 289A.50. Before a claim for refund can be processed, the taxpayer must pay the tax as assessed prior to the claim for refund. The commissioner, however, may use the information contained in the claim for refund to adjust the previous assessment as long as the statute of limitations for adjusting that assessment has not expired.

Subp. 4. **Date of assessment.** The date of assessment of the additional tax shown on the taxpayer's amended return is the date the commissioner receives the taxpayer's amended return.

Subp. 5. **Time limitations on assessment and collection.** The taxpayer's filing of an amended return does not alter or extend the period of limitation for assessment of tax.

The time limitations for collection of additional tax shown on a taxpayer's amended return begin to run on the date the commissioner receives the amended return.

Subp. 6. **Interest and penalties.** The additional tax shown on a taxpayer's amended return bears interest from the date the original return was due to the date the amount of additional tax assessed by the taxpayer on the amended return is paid.

Penalties for failure to timely pay tax under *Minnesota Statutes*, section 289A.60, subdivision 1, begin to accrue from the date the amended return is received by the commissioner to the date the additional tax assessed by the amended return is paid.

Penalties added to the original return for failure to timely file under *Minnesota Statutes*, section 289A.60, subdivision 2, are recalculated using the tax liability shown on the amended return as the tax liability on which the penalties are based.

Proposed Permanent Rules Relating to Orders of Assessment and Returns Made by the Commissioner

Rules as Proposed (all new material)

8160.0620 RETURNS MADE BY COMMISSIONER.

Subpart 1. **Making returns.** If a taxpaper fails to file a required return, the commissioner may make a return for the taxpayer under *Minnesota Statutes*, section 289A.35. For the purposes of this part, the terms in items A and B have the meanings given.

A. A "commissioner filed return" means a return made by the commissioner under *Minnesota Statutes*, section 289A.35.

B. The "filing date" of a commissioner filed return means the date the commissioner filed return is signed by the commissioner.

Subp. 2. **Status of commissioner filed return and taxpayer's return.** A commissioner filed return is prima facie correct and valid when filed, but the filing of a commissioner filed return does not satisfy the taxpayer's obligation to file a return.

If, after a commissioner filed return has been filed, the taxpayer files a return, the commissioner will allow the tax shown on the taxpayer's return to establish the taxpayer's current tax liability (except where the commissioner filed return is on judicial appeal or the tax liability has been adjudicated).

Subp. 3. **Adjusting the commissioner filed return.** Anytime before the taxpayer files a return, the commissioner may adjust the commissioner filed return by making a subsequent commissioner filed return or by issuing an order of assessment. After the taxpayer

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

has filed a return, the commissioner may not adjust the tax liability shown on that return by making a commissioner filed return. To adjust the taxpayer's return, the commissioner must issue an order of assessment.

Subp. 4. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the filing date of a commissioner filed return. The period of limitation for assessment begins to run on the date the taxpayer files a return. See *Minnesota Statutes*, section 289A.38.

Subp. 5. **Appealing a commissioner filed return.** A taxpayer cannot administratively appeal the tax liability shown on a commissioner filed return. However, the commissioner may determine, based on information supplied by the taxpayer, that the taxpayer is not required to file.

The taxpayer may appeal the requirement to file or the tax liability shown on a commissioner filed return to tax court under *Minnesota Statutes*, section 271.06. An appeal to the tax court must be made within 60 days from the filing date of the commissioner filed return.

Subp. 6. **Interest and penalties.** During the period in which the taxpayer may appeal a commissioner filed return to tax court and while an appeal is pending, interest under *Minnesota Statutes*, section 289A.55, subdivision 2, and penalties under *Minnesota Statutes*, section 289A.60, subdivisions 1, 2, and 3 continue to accrue.

Subp. 7. **Collection.** The periods of limitation for collection of tax shown on a commissioner filed return begin to run on the filing date of the commissioner filed return. The filing date constitutes the date of assessment of the tax.

If, after a commissioner filed return has been filed, the commissioner or the taxpayer assesses tax and the tax shown on that subsequent assessment is less than or equal to the amount of tax shown on the commissioner filed return, the date of assessment of the commissioner filed return remains in effect. If the amount of tax shown on a subsequent assessment is greater than the amount shown on the commissioner filed return, the date of assessment for the tax in excess of the amount shown on the commissioner filed return is the date of the subsequent assessment.

8160.0630 ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED.

Subpart 1. **Sending an order of assessment.** If a taxpayer fails to file a required return, the commissioner may send an order of assessment to the taxpayer under *Minnesota Statutes*, section 289A.37.

Subp. 2. **Status of the order of assessment and the taxpayer's return**. An order of assessment establishes the taxpayer's tax liability. The taxpayer, in any related action or proceeding, has the burden of establishing the incorrectness or invalidity of the order of assessment. The sending of an order of assessment does not satisfy the taxpayer's obligation to file a return. If the taxpayer files a return after an order of assessment has been sent, the taxpayer's obligation to file a return is satisfied, but the taxpayer's return does not establish a new tax liability (except to the extent that the tax shown on the taxpayer's return exceeds the tax shown on the order of assessment).

Subp. 3. **Limitation on time for assessment**. The period of limitations on assessment does not begin to run on the date of the order of assessment. The period of limitations on assessment begins to run on the date the taxpayer files a return. See *Minnesota Statutes*, section 289A.38.

Subp. 4. **Appealing the order of assessment.** A taxpayer may obtain reconsideration of an order of assessment through administrative review under *Minnesota Statutes*, section 289A.65, or may appeal to the tax court under *Minnesota Statutes*, section 271.06.If the taxpayer has not filed a return for the period for which administrative review is requested and the requirement to file is not in dispute, the taxpayer's written administrative appeal must include a return.

If the taxpayer fails to file a timely administrative appeal or a timely appeal to tax court, the taxpayer must pay the tax in full, but may file a clain for a refund under *Minnesota Statutes*, section 289A.50. If the taxpayer has not filed a return for the period for which a refund is claimed, a return must be filed as part of the refund claim.

Subp. 5. **Interest and penalties.** Interest under *Minnesota Statutes*, section 289A.55, subdivision 2, continues to accrue during the periods allowed for administrative review, appeal to tax court, and payment. Penalties for failure to make and file a return under *Minnesota Statutes*, section 289A.55, subdivision 2, continue to accrue until the taxpayer files a return. Penalties for failure to pay tax under *Minnesota Statutes*, section 289A.60, subdivision 1, are suspended from the date of the order of assessment to the date that the amount shown on the order must be paid to the commissioner. After this period expires, penalties for failure to pay tax start to accrue again based on the number of days the tax is not paid before the date of the order of assessment and the number of days the tax is not paid after the period for payment expires.

Subp. 6. **Collecting the assessment.** The periods of limitation on collection begin to run on the date of the order of assessment.

If, through administrative review or tax court appeal, the taxpayer meets the burden of establishing the invalidity of the order of assessment and the tax liability determined on review or appeal is less than or equal to the amount of tax shown on the order of assessment, the date of assessment remains the date of the order of assessment.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption Without a Public Hearing of Permanent Rules Governing Returns Made by the Commissioner, Orders of Assessment Issued When No Return has been Filed, and Amended Returns	FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the *State Register* on November 9, 1992 and was sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes, sections 14.14, subdivision 1 and 14.22 on November 2, 1992. (2) Statements of need and reasonableness were prepared before the notice of intent to adopt the rules without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and were available to the public.

(4) All persons were given the opportunity to submit comment on the rules for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rules were received by the Department. No comments on the rules were received by the Department. (7) No requests for notice of submission to the attorney general were received by the Department.

The above-captioned rules are needed and reasonable. (8)

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota (9) Rules, parts 8160.0620, 8160.0630, and 8160.0300 are adopted pursuant to the authority vested in the Commissioner by Minnesota Statutes, section 270.06(13).

12-11-'92
Date

Dorothy A. McClung
Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

State of Minnesota
Department of Revenue

In the Matter of the Proposed Adoption Without a Public Hearing of Permanent Rules Governing Returns Made by the Commissioner

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared to establish the statutory authority, need for, and reasonableness of the proposed part governing returns made by the commissioner. It is submitted pursuant to Minn. Stat. § 14.23 (1990) and Minn. Rules, part 2010.0700 (1991) requiring a Statement of Need and Reasonableness.

In preparing this Statement of Need and Reasonableness, the Department has considered this part's impact on local public bodies, agricultural land, and small businesses. The proposed part will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

Authority to Adopt Rules

Minn. Stat. § 270.06(13) (1990) provides that the Commissioner of Revenue shall promulgate rules concerning the administration of state tax laws.

Minnesota Rules, part 8160.0620, Returns Made by the Commissioner

If a taxpayer fails to file a required return, the commissioner may make a return for the taxpayer under Minn. Stat. § 289A.35 (1990). That statutory authorization does not clarify the status of returns made by the commissioner for the purposes of other statutory requirements. Statutory requirements relating to assessment, orders of assessment, limitations on time for assessment, periods of limitation for collection, and administrative appeal vary depending upon whether returns made by the commissioner are considered more analogous to returns filed by taxpayers or to orders of assessment issued by the commissioner. Questions arise regarding the

required treatment of returns made by the commissioner. The Department needs this part to set consistent policy for itself and the public to follow.

Subpart Analysis

Subpart 1. This subpart introduces the subject of the part and defines two terms which are repeatedly used in the part. The duplication of the statutory language in Minn. Stat. § 289A.35 (1990), allows the reader to clearly understand the subject of the part without referring to the statute.

Item A names a return made by the commissioner a "commissioner filed return". The term "commissioner filed return" is used throughout the Department as a shortened reference to a return made by the commissioner.

Item B defines the filing date of a commissioner filed return. The filing date is defined because the date is not given by statute but is necessary to establish a date of assessment. A commissioner filed return is an assessment in the form of a return made by the commissioner. The date of assessment of a return is the date the return was filed or should have been filed, whichever is later. Minn. Stat. § 270.65 (1990). Defining the filing date as the date the commissioner filed return is signed by the commissioner is reasonable because if a taxpayer files an untimely return, the taxpayer's return is considered filed on the date of receipt of the return by the commissioner. Minn. Stat. § 270.271 (1990). The date the return is signed by the commissioner is also the date the tax liability shown on the return is entered into the Department's records.

Subpart 2. This subpart clarifies that although a commissioner filed return is prima facie correct and valid, it should not be considered by the Department or by taxpayers as satisfying a taxpayer's obligation to file a return.

A commissioner filed return is used as a collection tool and as an inducement to the taxpayer to file. The Department's objectives are not limited to collection of the tax. The Department's objectives include collecting the correct amount of tax and

securing taxpayers compliance with filing requirements. This subpart provides incentive for taxpayers to file. This subpart allows the tax liability shown on a taxpayer's return to displace the liability shown on a commissioner filed return.

A taxpayer's return is the taxpayer's own assessment which contains a valid confession of judgment and a declaration that the return is correct. The taxpayer's return should reflect the taxpayer's correct tax liability. Also, criminal penalties exist for the taxpayer's failure to file which are unrelated to whether the correct tax is collected. *See e.g.,* Minn. Stat. § 289A.63, subd. 1 (1990). Federally, the IRS prepares returns for non-filers under 26 U.S.C. § 6020(b) (1986). The statute authorizing the IRS to make returns for non-filers is similar to Minnesota's statute authorizing commissioner filed returns. Federal courts have addressed the issue of whether a return executed by the secretary of the treasury constitutes a filed return, and they have found that it does not. The filing of a return for a taxpayer by the IRS does not excuse the taxpayer from filing a return. The filing of a secretary's return by the IRS is an administrative step which allows the assessment and collection process to begin. *See, Moore v. C.I.R.*, 722 F.2d 193, 196 (5th Cir. 1984); *United States v. Lacy*, 658 F.2d 396, 397 (5th Cir. 1981).

Because the Department considers receiving a return from each taxpayer a necessary part of the Department's authority to fix and collect tax liability under state tax law, a taxpayer is allowed the opportunity to displace the tax liability shown on a commissioner filed return with the taxpayer's own calculation of the tax liability. If the taxpayer files a return, the Department and the taxpayer, except with respect to the imposition of interest and penalties, are in the same position they would have been in had the taxpayer filed a return before a commissioner filed return was filed. A taxpayer who has failed to file a timely appeal to tax court does not have to pay the entire amount of tax shown on a commissioner filed return (an amount which could

be incorrect or overstated) and claim a refund, but may instead file a return for the correct amount of tax.

Taxpayers, however, are not allowed to take advantage of this provision if they are currently appealing a commissioner filed return or after the issue of liability on a commissioner filed return has been adjudicated. Exclusion of taxpayers who are appealing or have appealed a commissioner filed return is reasonable and necessary, because, at that point, a taxpayer's liability is being or has been determined by the Tax Court and not the Department of Revenue.

Subpart 3. As long as a taxpayer has not filed a return, correction of the tax shown on a commissioner filed return may be accomplished by making a subsequent commissioner filed return. Minn. Stat. § 289A.35 (1990); *See, Clemings v. Comm'r of Revenue,* Minn. Tax Ct., doc. no. 2426 (April, 6 1978). The Department may also choose to correct a commissioner filed return in a more formal manner by issuing an order of assessment under Minn. Stat. § 289A.37 (Supp. 1991).

If the taxpayer has filed a return, the Department's only available tool for adjusting the tax liability on the taxpayer's return is an order of assessment. A commissioner filed return may not be used after the taxpayer has filed a return. To adjust the taxpayer's return, the Department must issue an order of assessment under Minn. Stat. § 289A.37 (1990).

Subpart 4. The filing of the taxpayer's return starts the 3-1/2 year statute of limitations for assessment running under Minn. Stat. § 289A.38, subd. 1 (1990). The statute does not begin to run with the filing of a commissioner filed return because under Minn. Stat. § 289A.38, subd. 5, notwithstanding subdivision 1, if a taxpayer fails to file, tax may be assessed at any time.

Subpart 5. There is no authority in Minn. Stat. § 289A.65 (1990) for administratively appealing a commissioner filed return because it is not an order. Furthermore, allowing administrative appeal of a commissioner filed return adds an

unnecessary layer to the process of determining a taxpayer's correct tax liability because the taxpayer can change the liability merely by filing a return (see subpart 2). Once the taxpayer files a return, a subsequent order of assessment based upon audit of the return is appealable administratively.

Commissioner filed returns, however, are appealable to the tax court. The tax court has reviewed taxpayers' challenges to commissioner filed returns. *See, e.g., Petersen, Jr. v. Comm'r of Revenue*, Minn. Tax Ct., doc. no. 4192 (July 18, 1985); *Miller v. Comm'r of Revenue*, Minn. Tax Ct., doc. no. 2918 (December 23, 1980).

Subpart 6. As was stated in the analysis of subpart 2, the filing of a commissioner filed return does not satisfy a taxpayer's obligation to make and file a return. This obligation continues to exist and interest and penalties based on failure to file still apply.

Subpart 7. An assessment is required in order for there to be a collectible tax liability. The filing of a commissioner filed return is an assessment of tax under Minn. Stat. § 289A.35 (1990), but the definition of "date of assessment" in Minn. Stat. § 270.65 (1990) does not provide a date specifically for commissioner filed returns. Presumably, the language in Minn. Stat. § 270.65 (1990), stating that, "date of assessment means the date a return was filed or the date a return should have been filed whichever is later" is applicable to commissioner filed returns. It is reasonable to conclude that the date a commissioner filed return is filed is the date of assessment and starts the statutes of limitations running for collection.

An assessment subsequent to the filing of a commissioner filed return does not change the date of assessment for any amount shown on the commissioner filed return because the statutes of limitation for collection of the liability shown on the commissioner filed return begin to run on its date of the filing. Expressly stating that the assessment date remains the same preserves Department's priority as a creditor. While the language in this subpart merely restates current law, it is necessary to avoid

any implication that because the liability on the taxpayer's return replaces the liability on the commissioner filed return there is a new date of assessment. Any amount subsequently assessed by a taxpayer or the commissioner which is less than or equal to the amount shown on the previous assessment, has actually already been assessed. The date of assessment for taxes assessed in excess of the amount shown on a commissioner filed return is a new date because, to that extent, it is an entirely new assessment. The date of assessment for the excess is based on Minn. Stat. §§ 270.65 and 270.271, subd. 4 (1990).

Since a commissioner filed return is a collection tool, the periods of limitation should begin to run with the filing of a commissioner filed return. This encourages the Department to promptly follow the filing of a commissioner filed return with collection activities.

State of Minnesota
Department of Revenue

In the Matter of the Proposed Adoption Without a Public Hearing of Permanent Rules Governing Orders of Assessment Issued When No Return has been Filed

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared to establish the statutory authority, need for, and reasonableness of the proposed part governing orders of assessment issued when no return has been filed. It is submitted pursuant to Minn. Stat. § 14.23 (1990) and Minn. Rules, part 2010.0700 (1991) requiring a Statement of Need and Reasonableness.

In preparing this Statement of Need and Reasonableness, the Department has considered this part's impact on local public bodies, agricultural land, and small businesses. The proposed part will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

Authority to Adopt Rules

Minn. Stat. § 270.06(13) (1990) provides that the Commissioner of Revenue shall promulgate rules concerning the administration of state tax laws.

Minnesota Rules, part 8160.0630, Orders of Assessment Issued When No Return has been Filed

If a taxpayer has not filed a return, the commissioner may make a return for the taxpayer under Minn. Stat. § 289A.35 (1990) or send an order of assessment to the taxpayer under Minn. Stat. § 289A.37, subd. 1 (Supp. 1991). Questions regarding orders of assessment issued when no return has been filed arise because if a taxpayer files a return at all, it is filed after the taxpayer receives an order of assessment. What effect does the taxpayer's subsequent filing of a return have on an order of assessment? The

Department needs this part to clarify the consequences of issuing an order of assessment when the taxpayer has not filed a return.

Subpart Analysis.

Subpart 1. This subpart repeats statutory language found in Minn. Stat. § 289A.37, subd. 1 (Supp. 1991). The repetition is necessary for the reader to clearly understand the subject part. The subject of the part is orders of assessment issued when no return has been filed, not orders of assessment generally.

Subpart 2. The purpose of this subpart is to clarify that a taxpayer has to file a return regardless of whether an order of assessment has been issued. Collecting tax is the motivation behind issuing the order, but obtaining information from the taxpayer in the form of a return is still a requirement. This is demonstrated by state statutes authorizing criminal and civil penalties for failure to file. *See, e.g.*, Minn. Stat. §§ 289A.60 and 289A.63 (1990).

The taxpayer's return does not, however, establish the tax liability because all orders of assessment should be treated consistently. If an order of assessment and a taxpayer's return disagree, the return can be the basis of the taxpayer's administrative appeal and the issue of determining the correct liability is moved to the administrative review level. Non-filers are not given special treatment. A taxpayer who files a return and is subsequently assessed tax based upon audit of that return has to appeal administratively or to tax court if the taxpayer disagrees with the assessment. Under this subpart, non-filers will also follow this procedure.

Subpart 3. This subpart clarifies that even though an order of assessment establishes the taxpayer's tax liability, it does not start the period of limitations for assessment. If the taxpayer fails to file a return, tax may be assessed at any time. Minn. Stat. § 289A.38, subd. 5 (1990). This provision is consistent with the proposed part governing commissioner filed returns.

Subpart 4. Orders assessing tax are administratively appealable under Minn. Stat. § 289A.65 (1990). This subpart requires the taxpayer's return accompany the taxpayer's written administrative appeal except when the requirement to file is in dispute. Requiring the taxpayer to file a return is reasonable because, unless the requirement to file is in dispute, the review will be related to information which should be contained in a return.

Subpart 5. This subpart clarifies the treatment of penalties for failure to file a return and failure to pay tax. As stated in the analysis of subpart 2, even though an order of assessment establishes a taxpayer's tax liability, the taxpayer is still obligated to file a return. Penalties for failure to file continue until the taxpayer files. Penalties for failure to pay tax are discussed in this subpart because under Minn. Stat. § 289A.37, subd. 1(b) (1990), the taxpayer has 60 days after notice of the order of assessment or 60 days after final determination of an appeal to pay the tax shown on the assessment without penalty. Penalties for failure to pay should, however, accrue before and after the appeal period because payment is first due at the time the return was required to be filed and continues to be due after expiration of the order's appeal and payment period. Stating that interest continues to accrue under Minn. Stat. § 289A.55, subd. 2 (1990) is necessary to avoid any inference that because it was left out of the subpart, it is not due.

Subpart 6. The date of the order assessing taxes is the "date of assessment" under Minn. Stat. § 270.65 (1990). Periods of limitation on collection begin on the date of assessment. The date the order of assessment is made starts the statutes of limitations on collection running.

Because the collection period is running, the subsequent filing of a return by the taxpayer does not change the assessment date for any amount for which the statute of limitation on collections began to run on the date of the order. The date of assessment for taxes reported by a taxpayer on a return which exceeds the amount on

an order of assessment is based on Minn. Stat. §§ 270.65 and 270.271, subd. 4 (1990). This provision is consistent with the proposed part governing commissioner filed returns.

Department of Revenue

Proposed Permanent Rules Relating to Orders of Assessment and Returns Made by the Commissioner

Rules as Proposed (all new material)

8160.0620 RETURNS MADE BY COMMISSIONER.

Subpart 1. **Making returns.** If a taxpayer fails to file a required return, the commissioner may make a return for the taxpayer under Minnesota Statutes, section 289A.35. For the purposes of this part, the terms in items A and B have the meanings given.

A. A "commissioner filed return" means a return made by the commissioner under Minnesota Statutes, section 289A.35.

B. The "filing date" of a commissioner filed return means the date the commissioner filed return is signed by the commissioner.

Subp. 2. **Status of commissioner filed return and taxpayer's return.** A commissioner filed return is prima facie correct and valid when filed, but the filing of a commissioner filed return does not satisfy the taxpayer's obligation to file a return.

If, after a commissioner filed return has been filed, the taxpayer files a return, the commissioner will allow the tax shown on the taxpayer's return to establish the taxpayer's current tax liability (except where the commissioner filed return is on judicial appeal or the tax liability has been adjudicated).

Subp. 3. **Adjusting the commissioner filed return.** Anytime before the taxpayer files a return, the commissioner may adjust the commissioner filed return by making a subsequent commissioner filed return or by issuing an order of assessment. After the taxpayer has filed a return, the commissioner may not adjust the tax liability shown on that return by making a commissioner filed return. To adjust the taxpayer's return, the

Approved by Revisor

commissioner must issue an order of assessment.

Subp. 4. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the filing date of a commissioner filed return. The period of limitation for assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 5. **Appealing a commissioner filed return.** A taxpayer cannot administratively appeal the tax liability shown on a commissioner filed return. However, the commissioner may determine, based on information supplied by the taxpayer, that the taxpayer is not required to file.

The taxpayer may appeal the requirement to file or the tax liability shown on a commissioner filed return to tax court under Minnesota Statutes, section 271.06. An appeal to the tax court must be made within 60 days from the filing date of the commissioner filed return.

Subp. 6. **Interest and penalties.** During the period in which the taxpayer may appeal a commissioner filed return to tax court and while an appeal is pending, interest under Minnesota Statutes, section 289A.55, subdivision 2, and penalties under Minnesota Statutes, section 289A.60, subdivisions, 1, 2, and 3, continue to accrue.

Subp. 7. **Collection.** The periods of limitation for collection of tax shown on a commissioner filed return begin to run on the filing date of the commissioner filed return. The filing date constitutes the date of assessment of the tax.

If, after a commissioner filed return has been filed, the commissioner or the taxpayer assesses tax and the tax shown on that subsequent assessment is less than or equal to the amount of tax shown on the commissioner filed return, the date of assessment of the commissioner filed return remains in effect. If the amount of tax shown on a subsequent assessment is greater than the amount shown on the commissioner filed return, the date of assessment for the tax in excess of the amount shown on the commissioner filed return is the date of the subsequent assessment.

Approved
by Revisor _____

8160.0630 ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED.

Subpart 1. **Sending an order of assessment.** If a taxpayer fails to file a required return, the commissioner may send an order of assessment to the taxpayer under Minnesota Statutes, section 289A.37.

Subp. 2. **Status of the order of assessment and the taxpayer's return.** An order of assessment establishes the taxpayer's tax liability. The taxpayer, in any related action or proceeding, has the burden of establishing the incorrectness or invalidity of the order of assessment. The sending of an order of assessment does not satisfy the taxpayer's obligation to file a return. If the taxpayer files a return after an order of assessment has been sent, the taxpayer's obligation to file a return is satisfied, but the taxpayer's return does not establish a new tax liability (except to the extent that the tax shown on the taxpayer's return exceeds the tax shown on the order of assessment).

Subp. 3. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the date of the order of assessment. The period of limitations on assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 4. **Appealing the order of assessment.** A taxpayer may obtain reconsideration of an order of assessment through administrative review under Minnesota Statutes, section 289A.65, or may appeal to the tax court under Minnesota Statutes, section 271.06. If the taxpayer has not filed a return for the period for which administrative review is requested and the requirement to file is not in dispute, the taxpayer's written administrative appeal must include a return.

If the taxpayer fails to file a timely administrative appeal or a timely appeal to tax court, the taxpayer must pay the tax in full, but may file a claim for a refund under Minnesota Statutes, section 289A.50. If the taxpayer has not

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filed a return for the period for which a refund is claimed, a return must be filed as part of the refund claim.

Subp. 5. **Interest and penalties.** Interest under Minnesota Statutes, section 289A.55, subdivision 2, continues to accrue during the periods allowed for administrative review, appeal to tax court, and payment. Penalties for failure to make and file a return under Minnesota Statutes, section 289A.55, subdivision 2, continue to accrue until the taxpayer files a return. Penalties for failure to pay tax under Minnesota Statutes, section 289A.60, subdivision 1, are suspended from the date of the order of assessment to the date that the amount shown on the order must be paid to the commissioner. After this period expires, penalties for failure to pay tax start to accrue again based on the number of days the tax is not paid before the date of the order of assessment and the number of days the tax is not paid after the period for payment expires.

Subp. 6. **Collecting the assessment.** The periods of limitation on collection begin to run on the date of the order of assessment.

If, through administrative review or tax court appeal, the taxpayer meets the burden of establishing the invalidity of the order of assessment and the tax liability determined on review or appeal is less than or equal to the amount of tax shown on the order of assessment, the date of assessment remains the date of the order of assessment.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Orders of Assessment and Returns Made by the Commissioner

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8160

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

In the Matter of the Proposed Adoption Without a Public Hearing of Permanent Rules Governing Returns Made by the Commissioner, Orders of Assessment Issued When No Return Has Been Filed, and Amended Returns

DECLARATION OF COUNSEL

I, Barry R. Greller, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record and that based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed without exception. For Attorney General billing purposes, the four-digit docket client code is 0739.

Dated: January 14, 1993.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

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State of Minnesota
Department of Revenue

In the Matter of the Proposed Adoption Without a Public Hearing of Rules governing Returns Made by the Commissioner, Orders of Assessment Issued When No Return has been Filed, and Amended Returns

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) **NOTICE IS HEREBY GIVEN THAT** the Minnesota Department of Revenue intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, section 14.22 to 14.28. The statutory authority to adopt the proposed rules is Minnesota Statutes, section 270.06(13).

(2) All persons have 30 days, until 4:30 p.m. on December 9, 1992, in which to submit comment in support of or in opposition to the proposed rules or any subpart of the proposed rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on any of the rules within the 30-day comment period, by 4:30 p.m. on December 9, 1992. (4) If 25 or more persons submit a written request for a public hearing by 4:30 p.m. on December 9, 1992, a public hearing will be held unless a sufficient number withdraw their requests in writing. (6) Any person requesting a public hearing must state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed under Minnesota Statutes, sections 14.131 to 14.20. Comments or written requests for a public hearing must be submitted to:

(5) Jason P. Hardy
Appeals, Legal Services, and Criminal Investigations Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 extension 117

(8) The proposed rules may be modified if the modifications are supported by data and views submitted to the Department of Revenue and do not result in a

substantial change in the proposed rules as noticed. Copies of the proposed rules are attached to this notice.

(12) **A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Jason P. Hardy upon request.

(13)(14) In preparing these rules, the Department has considered their affects on local public bodies, agricultural land, and small businesses. The proposed rules will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

(9) If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Jason P. Hardy at the address and telephone number listed above.

Dated: October 26, 1992

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Department of Revenue

Proposed Permanent Rules Relating to Orders of Assessment and Returns Made by the Commissioner

Rules as Proposed (all new material)

8160.0620 RETURNS MADE BY COMMISSIONER.

Subpart 1. **Making returns.** If a taxpayer fails to file a required return, the commissioner may make a return for the taxpayer under Minnesota Statutes, section 289A.35. For the purposes of this part, the terms in items A and B have the meanings given.

A. A "commissioner filed return" means a return made by the commissioner under Minnesota Statutes, section 289A.35.

B. The "filing date" of a commissioner filed return means the date the commissioner filed return is signed by the commissioner.

Subp. 2. **Status of commissioner filed return and taxpayer's return.** A commissioner filed return is prima facie correct and valid when filed, but the filing of a commissioner filed return does not satisfy the taxpayer's obligation to file a return.

If, after a commissioner filed return has been filed, the taxpayer files a return, the commissioner will allow the tax shown on the taxpayer's return to establish the taxpayer's current tax liability (except where the commissioner filed return is on judicial appeal or the tax liability has been adjudicated).

Subp. 3. **Adjusting the commissioner filed return.** Anytime before the taxpayer files a return, the commissioner may adjust the commissioner filed return by making a subsequent commissioner filed return or by issuing an order of assessment. After the taxpayer has filed a return, the commissioner may not adjust the tax liability shown on that return by making a commissioner filed return. To adjust the taxpayer's return, the

Approved by Revisor

commissioner must issue an order of assessment.

Subp. 4. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the filing date of a commissioner filed return. The period of limitation for assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 5. **Appealing a commissioner filed return.** A taxpayer cannot administratively appeal the tax liability shown on a commissioner filed return. However, the commissioner may determine, based on information supplied by the taxpayer, that the taxpayer is not required to file.

The taxpayer may appeal the requirement to file or the tax liability shown on a commissioner filed return to tax court under Minnesota Statutes, section 271.06. An appeal to the tax court must be made within 60 days from the filing date of the commissioner filed return.

Subp. 6. **Interest and penalties.** During the period in which the taxpayer may appeal a commissioner filed return to tax court and while an appeal is pending, interest under Minnesota Statutes, section 289A.55, subdivision 2, and penalties under Minnesota Statutes, section 289A.60, subdivisions, 1, 2, and 3, continue to accrue.

Subp. 7. **Collection.** The periods of limitation for collection of tax shown on a commissioner filed return begin to run on the filing date of the commissioner filed return. The filing date constitutes the date of assessment of the tax.

If, after a commissioner filed return has been filed, the commissioner or the taxpayer assesses tax and the tax shown on that subsequent assessment is less than or equal to the amount of tax shown on the commissioner filed return, the date of assessment of the commissioner filed return remains in effect. If the amount of tax shown on a subsequent assessment is greater than the amount shown on the commissioner filed return, the date of assessment for the tax in excess of the amount shown on the commissioner filed return is the date of the subsequent assessment.

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8160.0630 ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED.

Subpart 1. **Sending an order of assessment.** If a taxpayer fails to file a required return, the commissioner may send an order of assessment to the taxpayer under Minnesota Statutes, section 289A.37.

Subp. 2. **Status of the order of assessment and the taxpayer's return.** An order of assessment establishes the taxpayer's tax liability. The taxpayer, in any related action or proceeding, has the burden of establishing the incorrectness or invalidity of the order of assessment. The sending of an order of assessment does not satisfy the taxpayer's obligation to file a return. If the taxpayer files a return after an order of assessment has been sent, the taxpayer's obligation to file a return is satisfied, but the taxpayer's return does not establish a new tax liability (except to the extent that the tax shown on the taxpayer's return exceeds the tax shown on the order of assessment).

Subp. 3. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the date of the order of assessment. The period of limitations on assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 4. **Appealing the order of assessment.** A taxpayer may obtain reconsideration of an order of assessment through administrative review under Minnesota Statutes, section 289A.65, or may appeal to the tax court under Minnesota Statutes, section 271.06. If the taxpayer has not filed a return for the period for which administrative review is requested and the requirement to file is not in dispute, the taxpayer's written administrative appeal must include a return.

If the taxpayer fails to file a timely administrative appeal or a timely appeal to tax court, the taxpayer must pay the tax in full, but may file a claim for a refund under Minnesota Statutes, section 289A.50. If the taxpayer has not

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filed a return for the period for which a refund is claimed, a return must be filed as part of the refund claim.

Subp. 5. **Interest and penalties.** Interest under Minnesota Statutes, section 289A.55, subdivision 2, continues to accrue during the periods allowed for administrative review, appeal to tax court, and payment. Penalties for failure to make and file a return under Minnesota Statutes, section 289A.55, subdivision 2, continue to accrue until the taxpayer files a return. Penalties for failure to pay tax under Minnesota Statutes, section 289A.60, subdivision 1, are suspended from the date of the order of assessment to the date that the amount shown on the order must be paid to the commissioner. After this period expires, penalties for failure to pay tax start to accrue again based on the number of days the tax is not paid before the date of the order of assessment and the number of days the tax is not paid after the period for payment expires.

Subp. 6. **Collecting the assessment.** The periods of limitation on collection begin to run on the date of the order of assessment.

If, through administrative review or tax court appeal, the taxpayer meets the burden of establishing the invalidity of the order of assessment and the tax liability determined on review or appeal is less than or equal to the amount of tax shown on the order of assessment, the date of assessment remains the date of the order of assessment.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Orders of Assessment and Returns Made by the Commissioner

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8160

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

Department of Revenue

Proposed Permanent Rules Relating to Amended Returns

Rules as Proposed (all new material)

8160.0300 AMENDED RETURNS.

Subpart 1. **Application.** This part applies only to income, corporate franchise, and estate taxes under Minnesota Statutes, chapters 290 and 291.

Subp. 2. **Effect of filing more than one return before the due date.** If more than one return for a single taxable period is filed by the date prescribed for filing the return (without regard to any extensions), the last return filed by the due date supersedes the previous return or returns. The last return filed by the due date is the taxpayer's original return for the taxable period and is not an amended return.

Subp. 3. **Effect of amended returns.** If a taxpayer files an amended return showing tax which is greater than the tax shown on the most recent assessment, the amended return constitutes an assessment which establishes the taxpayer's liability.

If a taxpayer files an amended return showing tax which is less than the tax shown on the most recent assessment, the amended return constitutes a claim for refund under Minnesota Statutes, section 289A.50. Before a claim for refund can be processed, the taxpayer must pay the tax as assessed prior to the claim for refund. The commissioner, however, may use the information contained in the claim for refund to adjust the previous assessment as long as the statute of limitations for adjusting that assessment has not expired.

Subp. 4. **Date of assessment.** The date of assessment of the additional tax shown on the taxpayer's amended return is the date the commissioner receives the taxpayer's amended return.

Subp. 5. **Time limitations on assessment and collection.** The taxpayer's filing of an amended return does not alter or

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extend the period of limitation for assessment of tax.

The time limitations for collection of additional tax shown on a taxpayer's amended return begin to run on the date the commissioner receives the amended return.

Subp. 6. **Interest and penalties.** The additional tax shown on a taxpayer's amended return bears interest from the date the original return was due to the date the amount of additional tax assessed by the taxpayer on the amended return is paid.

Penalties for failure to timely pay tax under Minnesota Statutes, section 289A.60, subdivision 1, begin to accrue from the date the amended return is received by the commissioner to the date the additional tax assessed by the amended return is paid.

Penalties added to the original return for failure to timely file under Minnesota Statutes, section 289A.60, subdivision 2, are recalculated using the tax liability shown on the amended return as the tax liability on which the penalties are based.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Amended Returns

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8160

The attached rules are approved for
publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

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STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES GOVERNING RETURNS MADE BY THE COMMISSIONER, ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED, AND AMENDED RETURNS

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Margaret A. Connolly, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 2nd day of November, 1992.

That on the 2nd day of November, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Margaret A. Connolly
MARGARET A. CONNOLLY
SECRETARY, SENIOR TYPIST 4

Subscribed and sworn to
before me this
2nd day of November, 1992

Wayne L. Sather
WAYNE L. SATHER

WAYNE L. SATHER
NOTARY PUBLIC--MINNESOTA
DAKOTA COUNTY
My Commission Expires MAY 30, 1997