

CHAPTER 8160
DEPARTMENT OF REVENUE
TAX ADMINISTRATION AND COMPLIANCE

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| 8160.0300 | AMENDED RETURNS. | 8160.0620 | RETURNS MADE BY COMMISSIONER. |
| 8160.0500 | INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED, LEGALLY SEPARATED, AND WIDOWED SPOUSES FOR INDIVIDUAL INCOME TAX. | 8160.0630 | ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED. |

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. [Repealed, L 2000 c 490 art 13 s 21]

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.

Statutory Authority: *MS s 270.06; 270C.06*

History: *17 SR 2106; L 2000 c 490 art 13 s 21; L 2005 c 151 art 1 s 114*

**8160.0500 INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED,
 LEGALLY SEPARATED, AND WIDOWED SPOUSES FOR
 INDIVIDUAL INCOME TAX.**

Subpart 1. **General rule.** For all joint returns, and for combined returns for taxable years 1981 through 1984, the liability of a husband and wife for unpaid individual income taxes is joint and several.

Subp. 2. **Innocent spouse relief.** Either spouse, whether the marriage has been dissolved, legally separated, or terminated by the death of the other spouse or not, can apply to the Department of Revenue for innocent spouse relief from joint and several liability. The spouse must qualify for relief under the conditions prescribed in section 6015(b) of the Internal Revenue Code, and the regulations and federal court cases interpreting that code section.

If either spouse is found to qualify for innocent spouse relief from payment of an income tax amount, the other spouse is then solely liable, in full, for that amount.

Subp. 3. **Liability of divorced, legally separated, and widowed spouses; calculation.** In the case of divorced, legally separated, and widowed spouses, either spouse, or the surviving spouse, may apply to the Department of Revenue for a division of their joint income tax liability into two separate liabilities due from each spouse. Application must be made, in writing, by providing a copy of the decree of dissolution of marriage, decree of legal separation, or death record of the deceased spouse, and a copy of the state and federal tax returns, including required attachments and schedules, for the tax year of the liability. The formula for dividing the liability between the spouses is based upon a calculation of what their proportionate shares of the tax would be if they had filed separate returns.

Solely for the purpose of apportioning the liability between the spouses, the criteria in items A, B, and C shall be used.

A. Income, deductions, credits, exemptions, estimated payments, tax payments, and tax refunds attributable to, earned by, paid by, or paid to, solely one spouse shall be assigned to that spouse.

B. All of the items in item A that are attributable to, earned by, or paid to both spouses jointly, or paid from joint funds of both spouses, shall be divided equally between the spouses.

C. For purposes of additional assessments of income tax, the separate return apportionment shall be made solely based upon the additional assessment, without regard to any of the items in item A that are reported on the original return.

If innocent spouse relief is granted from liability for an additional assessment of income tax, the additional assessment is not included in the calculation of the separate return formula. For example, H and W file a return without remitting the tax. Then, an additional assessment is made, and one of the spouses is granted innocent spouse relief from payment of the assessment. If the spouses are divorced, legally separated, or widowed, their liabilities are their shares of the tax not remitted with the return, and that amount is apportioned as follows:

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| Spouse's separate liability calculated on original return only | x | Unpaid balance due on original return |
| Total of both spouses' separate liabilities calculated on original return only | | |

Subp. 4. **Election of remedies; effect of innocent spouse relief and separate liability determinations.** Subject to subpart 3, item C, the separate return formula for calculating the liability of each spouse can be applied both to taxes reported on a return but not paid and to additional assessments of income tax. Innocent spouse relief applies only to additional assessments.

In the case of additional assessments, when an innocent spouse claim is allowed, the separate liability calculation is not available; conversely, when a separate liability calculation is allowed, innocent spouse relief is not available.

An innocent spouse relief determination or separate liability calculation, or any combination thereof, does not increase or reduce the amount of the underlying tax liability owed jointly by both spouses, whether married, divorced, legally separated, or widowed, that was owing prior to the granting of relief or calculation of the formula.

Subp. 5. **Notice requirements; appeal rights.** When either spouse applies for a separate liability calculation, the Department of Revenue must mail a copy of its proposed apportionment of liability to the other spouse at his or her last known address. In the case of a widowed spouse, notice must be mailed to the personal representative of the estate of the deceased spouse. The notice to the other spouse shall not be considered a disclosure violation under Minnesota Statutes, chapter 270B. The other spouse then has 30 days from the date of mailing of the notice in which to contest the separate liability calculation shown in the proposal. If the other spouse applies for innocent spouse relief, the department must make the innocent spouse determination first.

If either spouse applies for innocent spouse relief, the relief cannot be granted unless the department first gives notice to the other spouse of its intent to grant the relief. The other spouse then has 30 days in which to contest the granting of innocent spouse relief to the applicant spouse. If the other spouse applies for a separate liability calculation, the department must make the innocent spouse determination first.

A denial or granting of innocent spouse relief or an apportionment of a liability between spouses, once it becomes final, is not appealable administratively, but is appealable to the Minnesota tax court in the manner provided in Minnesota Statutes, chapter 271.

Statutory Authority: *MS s 270.06; 270C.06*

History: *17 SR 1758; 25 SR 971; L 2001 1Sp9 art 15 s 32; L 2005 c 151 art 1 s 114*

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 270C.33, subdivision 3. 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 270C.33, subdivision 3.

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.

Statutory Authority: *MS s 270.06; 270C.06*

History: *17 SR 2106; L 2005 c 151 art 1 s 114,116*

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 270C.33.

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 270C.35, 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 payable to the commissioner 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.60, subdivision 2, continue to accrue until the taxpayer files a return for the tax type and period upon which the order is based. Penalties for failure to pay tax under Minnesota Statutes, section 289A.60, subdivision 1, continue to accrue until the taxpayer pays the amount assessed.

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.

Statutory Authority: *MS s 270.06; 270C.06*

History: *17 SR 2106; 26 SR 435; L 2005 c 151 art 1 s 114,116*