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State of Minnesota
HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 918

02/09/2017 Authored by Rosenthal and Thissen
The bill was read for the first time and referred to the Committee on State Government Finance
03/01/2017 Adoption of Report: Re-referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act
1.2 relating to taxation; limiting assessment authority of the commissioner of revenue;
1.3 establishing a private letter ruling program; appropriating money; amending
1.4 Minnesota Statutes 2016, sections 270C.33, by adding a subdivision; 270C.34,
1.5 subdivision 1; 289A.60, subdivision 1; proposing coding for new law in Minnesota
1.6 Statutes, chapter 270C.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. **[270C.075] PRIVATE LETTER RULINGS.**

1.9 Subdivision 1. **Program established.** By January 1, 2018, the commissioner shall
1.10 establish and implement a program for issuing private letter rulings to taxpayers to provide
1.11 guidance as to how the commissioner will apply Minnesota tax law to a specific transaction,
1.12 arrangement, or other fact situation of the applying taxpayer. In establishing the terms of
1.13 the program, the commissioner may provide that rulings will not be issued in specified
1.14 subject areas, for categories of transactions, or under specified provisions of law, if the
1.15 commissioner determines doing so is in the best interests of the state and sound tax
1.16 administration.

1.17 Subd. 2. **Application procedure; fees.** (a) The commissioner shall establish an
1.18 application procedure and forms for a taxpayer to request a private letter ruling. The
1.19 commissioner may require the taxpayer to provide any supporting factual information and
1.20 certifications that the commissioner determines necessary or appropriate to issuing private
1.21 letter rulings. The requirements may vary based on the type of ruling requested.

1.22 (b) The commissioner may charge an applicant for the actual cost of preparing the private
1.23 letter ruling, including the cost of employee time, but the charge may not exceed \$1,000
1.24 per private letter ruling. Any fees collected under this section must be deposited in the

Revenue Department service and recovery special revenue fund, established under section 270C.15, and are appropriated to the commissioner to offset the cost of issuing private letter rulings under this section and related administrative costs.

(c) If the commissioner fails to issue a ruling to the taxpayer within 90 days after the taxpayer's filing of a completed application, the commissioner must refund the application fee to the taxpayer, however, the commissioner must issue a private letter ruling unless the taxpayer withdraws the request.

Subd. 3. **Effect.** (a) A private letter ruling is binding on the commissioner with respect to the taxpayer to whom the ruling is issued, if:

(1) there was no misstatement or omission of material facts in the application or other information provided to the commissioner;

(2) the facts that subsequently developed were not materially different from the facts upon which the ruling was based;

(3) the applicable statute, administrative rule, federal law referenced by state law, or other relevant law has not changed; and

(4) the taxpayer acted in good faith in applying for and relying on the ruling.

(b) Private letter rulings have no precedential effect and may not be relied upon by a taxpayer other than as provided by paragraph (a).

Subd. 4. **Public access.** The commissioner shall make private letter rulings issued under this section available to the public on the department's Web site. The published rulings must redact any information that would permit identification of the requesting taxpayer.

Subd. 5. **Legislative report.** (a) By January 31 of each odd-numbered year, the commissioner shall report, in writing, to the legislature the following information for the immediately preceding two calendar years:

(1) the number of applications for private letter rulings;

(2) the number of private letter rulings issued, including the number issued within the 90-day time period under subdivision 2, paragraph (c);

(3) the amount of application fees refunded, if any;

(4) the tax types for which rulings were requested;

(5) the types and characteristics of taxpayers applying for rulings; and

(6) any other information that the commissioner considers relevant to legislative oversight of the private letter ruling program.

(b) The report must be filed as provided in section 3.195, and copies provided to the chairs and ranking minority members of the committees of the house of representatives and the senate with jurisdiction over taxes and appropriations to the Department of Revenue.

EFFECTIVE DATE. This section is effective the day following final enactment, except that the first legislative report under subdivision 5 is due January 31, 2021.

Sec. 2. Minnesota Statutes 2016, section 270C.33, is amended by adding a subdivision to read:

Subd. 4a. **Limitations; sales, corporate, and income taxes.** (a) The provisions of this subdivision are a limitation on the assessment authority of the commissioner under this section.

(b) The commissioner must not assess additional tax due under chapter 290 or 297A if each of the following requirements are met:

(1) the tax reported by the taxpayer is consistent with and based on past reporting or other practices of the taxpayer that were fully disclosed to the commissioner and were approved, in writing, to the taxpayer by the commissioner, including by issuing an audit assessing no additional tax liability with respect to that item for a prior taxable period; and

(2) effective for a taxable period beginning after the period covered by clause (1), neither the statute or administrative rule on which the reporting or other practice is based has been materially changed, nor has the commissioner issued a revenue notice or directly notified the taxpayer, in writing, of a change in the commissioner's position as to the proper reporting or other treatment of the relevant income, transaction, deduction, or other item.

(c) For an audit of a prior taxable period by the commissioner, paragraph (b), clause (1), applies only to the issues within the scope of and specifically addressed by the audit.

EFFECTIVE DATE. This section is effective for assessments made after June 30, 2017.

Sec. 3. Minnesota Statutes 2016, section 270C.34, subdivision 1, is amended to read:

Subdivision 1. **Authority.** (a) The commissioner may abate, reduce, or refund any penalty or interest that is imposed by a law administered by the commissioner, or imposed by section 270.0725, subdivision 1 or 2, or 270.075, subdivision 2, as a result of the late payment of

tax or late filing of a return, or any part of an additional tax charge under section 289A.25, subdivision 2, or 289A.26, subdivision 4, if the failure to timely pay the tax or failure to timely file the return is due to reasonable cause, or if the taxpayer is located in a presidentially declared disaster or in a presidentially declared state of emergency area or in an area declared to be in a state of emergency by the governor under section 12.31.

(b) The commissioner shall abate any part of a penalty or additional tax charge under section 289A.25, subdivision 2, or 289A.26, subdivision 4, attributable to erroneous advice given to the taxpayer in writing by an employee of the department acting in an official capacity, if the advice:

(1) was reasonably relied on and was in response to a specific written request of the taxpayer; and

(2) was not the result of failure by the taxpayer to provide adequate or accurate information.

(c) In addition to the authority under paragraphs (a) and (b), the commissioner may decline to impose or may abate any penalty under section 289A.60 or other law, or an additional tax charge under section 289A.25, subdivision 2, or 289A.26, subdivision 4.

EFFECTIVE DATE. This section is effective the day following enactment.

Sec. 4. Minnesota Statutes 2016, section 289A.60, subdivision 1, is amended to read:

Subdivision 1. **Penalty for failure to pay tax.** (a) If a corporate franchise, fiduciary income, mining company, estate, partnership, S corporation, or nonresident entertainer tax is not paid within the time specified for payment, a penalty of six percent is added to the unpaid tax, except that if a corporation or mining company meets the requirements of section 289A.19, subdivision 2, the penalty is not imposed.

(b) For the taxes listed in paragraph (a), in addition to the penalty in that paragraph, whether imposed or not, if a return or amended return is filed after the due date, without regard to extensions, and any tax reported as remaining due is not remitted with the return or amended return, a penalty of five percent of the tax not paid is added to the tax. If the commissioner issues an order assessing additional tax for a tax listed in paragraph (a), and the tax is not paid within 60 days after the mailing of the order or, if appealed, within 60 days after final resolution of the appeal, a penalty of five percent of the unpaid tax is added to the tax.

(c) If an individual income tax is not paid within the time specified for payment, a penalty of four percent is added to the unpaid tax. There is a presumption of reasonable cause for

the late payment if the individual: (i) pays by the due date of the return at least 90 percent of the amount of tax, after credits other than withholding and estimated payments, shown owing on the return; (ii) files the return within six months after the due date; and (iii) pays the remaining balance of the reported tax when the return is filed.

(d) If the commissioner issues an order assessing additional individual income tax, and the tax is not paid within 60 days after the mailing of the order or, if appealed, within 60 days after final resolution of the appeal, a penalty of four percent of the unpaid tax is added to the tax.

(e) If a withholding or sales or use tax is not paid within the time specified for payment, a penalty must be added to the amount required to be shown as tax. The penalty is five percent of the tax not paid on or before the date specified for payment of the tax if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

(f) No penalty applies under this subdivision if the total calculated penalty that would otherwise apply under paragraphs (a) to (e) is less than \$150.

EFFECTIVE DATE. This section is effective for penalties imposed after June 30, 2017.

Sec. 5. **APPROPRIATION; PRIVATE LETTER RULING PROGRAM.**

\$..... in fiscal year 2018 is appropriated from the general fund to the commissioner of revenue for the cost of establishing and administering the private letter ruling program under section 1.