

**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*

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