

CHAPTER 8175
DEPARTMENT OF REVENUE
FAILURE TO PAY TAXES

8175.0100 REPEATED FAILURES TO PAY TAXES.

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Subpart 1. Definition of pattern of repeated failures.

A. Taxpayers who have demonstrated a pattern of repeated failures to pay taxes by the due date are subject to a penalty under Minnesota Statutes, sections 289A.60, subdivision 5a; 297E.12, subdivision 6; 297F.19, subdivision 6; and 297G.18, subdivision 6. For purposes of imposing this penalty, a "pattern of repeated failures" means that during the previous 25 months the taxpayer has not paid tax by the due date for the same tax type on at least three occasions. If one or more of the occasions is a failure to pay as defined in item D, subitem (1), then the pattern must be at least four occasions.

B. If there are separate taxes imposed under the same chapter of Minnesota Statutes or separate taxes that are required to be reported on one return and paid at the same time, "same tax type" means all taxes imposed under that chapter, or all taxes, fees, or other payments required to be reported on that return and paid at the same time.

C. For purposes of withholding tax, "failure to pay" means failure to make all deposits due during the quarterly reporting period by the due date of the quarterly return.

D. Failure to pay includes:

(1) failure to make an estimated payment by the due date that results in the imposition of an additional charge for underpayment of estimated tax; or

(2) failure to make a June estimated payment or electronic funds transfer payment by the due date that results in imposition of a late payment penalty.

E. Instances of making a late payment, where the late payment penalty has been abated because the taxpayer established reasonable cause for the lateness, are not included in the definition of pattern of repeated failures under this subpart.

F. For purposes of measuring the 25-month period, if the time in which to pay tax has been extended and the tax is not paid within the extended time period, the late payment violation is considered to have occurred on the original due date of the tax.

Subp. 2. **Notice.** If a taxpayer meets the criteria under subpart 1, a penalty for repeated failures to pay taxes cannot be imposed unless the commissioner gives the taxpayer written notice. The notice must be sent to the taxpayer's last known address ten days before the next tax payment after the notice is due. The ten days commence on the day following the date of the notice. The notice must contain a description of the previous late payment violations, including the tax type and tax

period, and a warning that the penalty will be imposed upon future violations. The notice remains in effect for any late payment violations for the same tax type or types occurring after the date of the notice. If a length of time passes after the notice so that there are two or less violations in the preceding 25-month period, including violations upon which a penalty for repeated failures to pay taxes has been imposed, the notice expires. If penalties are subsequently imposed under subpart 3, the correctness of the notice may be appealed as indicated in subpart 4.

Subp. 3. Amount of penalty. After a taxpayer establishes a pattern of delinquencies that meets the criteria under subpart 1, and the notice required by subpart 2 has been given, the penalty for future late payment violations is 25 percent of the amount of tax, as finally determined by the commissioner to be owing, that is not paid by the due date. The penalty is in addition to other applicable penalties or charges imposed by law.

Subp. 4. Appeal rights. If a 25 percent penalty is imposed, the taxpayer may file a request for an abatement of the penalty on the ground that there is reasonable cause for the late payment upon which the penalty is imposed. Also, in the same time and manner as making a request for an abatement, the taxpayer may appeal the imposition of the penalty on the ground that the notice under subpart 2 is incorrect. The right to contest the notice does not include claiming that there was reasonable cause for the lateness of a late payment violation listed in the notice, if the time in which to request an abatement of the late payment penalty for that violation has expired. The procedure under this subpart is governed by Minnesota Statutes, section 270C.34.

Subp. 5. Effective date. For purposes of determining whether a taxpayer meets the criteria under subpart 1, violations for late payment of taxes can occur before or after March 1, 1994.

Statutory Authority: *MS s 14.388; 270C.06; L 1993 c 375 art 10 s 51*

History: *18 SR 1891; L 2003 c 127 art 7 s 14; L 2005 c 151 art 1 s 114,116; 49 SR 1151*

Published Electronically: *April 21, 2025*