

1 Department of Revenue

2

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

5

6 Rules as Adopted

7 8160.0620 RETURNS MADE BY COMMISSIONER.

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

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

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

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

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

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

1 commissioner must issue an order of assessment.

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

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

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

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

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

27 If, after a commissioner filed return has been filed, the  
28 commissioner or the taxpayer assesses tax and the tax shown on  
29 that subsequent assessment is less than or equal to the amount  
30 of tax shown on the commissioner filed return, the date of  
31 assessment of the commissioner filed return remains in effect.  
32 If the amount of tax shown on a subsequent assessment is greater  
33 than the amount shown on the commissioner filed return, the date  
34 of assessment for the tax in excess of the amount shown on the  
35 commissioner filed return is the date of the subsequent  
36 assessment.

1 8160.0630 ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN  
2 FILED.

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

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

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

24 Subp. 4. Appealing the order of assessment. A taxpayer  
25 may obtain reconsideration of an order of assessment through  
26 administrative review under Minnesota Statutes, section 289A.65,  
27 or may appeal to the tax court under Minnesota Statutes, section  
28 271.06. If the taxpayer has not filed a return for the period  
29 for which administrative review is requested and the requirement  
30 to file is not in dispute, the taxpayer's written administrative  
31 appeal must include a return.

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

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

3       Subp. 5. **Interest and penalties.** Interest under Minnesota  
4 Statutes, section 289A.55, subdivision 2, continues to accrue  
5 during the periods allowed for administrative review, appeal to  
6 tax court, and payment. Penalties for failure to make and file  
7 a return under Minnesota Statutes, section 289A.55, subdivision  
8 2, continue to accrue until the taxpayer files a return.  
9 Penalties for failure to pay tax under Minnesota Statutes,  
10 section 289A.60, subdivision 1, are suspended from the date of  
11 the order of assessment to the date that the amount shown on the  
12 order must be paid to the commissioner. After this period  
13 expires, penalties for failure to pay tax start to accrue again  
14 based on the number of days the tax is not paid before the date  
15 of the order of assessment and the number of days the tax is not  
16 paid after the period for payment expires.

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

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