

1 Department of Revenue

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3 Adopted Permanent Rules Relating to Penalty for Repeated  
4 Failures to Pay Taxes

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6 Rules as Adopted

7 8175.0100 REPEATED FAILURES TO PAY TAXES.

8 Subpart 1. Definition of pattern of repeated failures.

9 A. Taxpayers who have demonstrated a pattern of  
10 repeated failures to pay taxes by the due date are subject to a  
11 penalty under Minnesota Statutes, sections 60A.15, subdivision  
12 9e; 60A.199, subdivision 6a; 289A.60, subdivision 5a; 294.03,  
13 subdivision 4; 297.43, subdivision 4a; 297C.14, subdivision 9;  
14 299F.23, subdivision 5; and 349.217, subdivision 5a. For  
15 purposes of imposing this penalty, a "pattern of repeated  
16 failures" means that during the previous 25 months the taxpayer  
17 has not paid tax by the due date for the same tax type on at  
18 least three occasions. If one or more of the occasions is a  
19 failure to pay as defined in item D, subitem (1), then the  
20 pattern must be at least four occasions.

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

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

30 D. Failure to pay includes:

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

34 (2) failure to make a June estimated payment or  
35 electronic funds transfer payment by the due date that results

1 in imposition of a late payment penalty.

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

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

11 Subp. 2. **Notice.** If a taxpayer meets the criteria under  
12 subpart 1, a penalty for repeated failures to pay taxes cannot  
13 be imposed unless the commissioner gives the taxpayer written  
14 notice. The notice must be sent to the taxpayer's last known  
15 address ten days before the next tax payment after the notice is  
16 due. The ten days commence on the day following the date of the  
17 notice. The notice must contain a description of the previous  
18 late payment violations, including the tax type and tax period,  
19 and a warning that the penalty will be imposed upon future  
20 violations. The notice remains in effect for any late payment  
21 violations for the same tax type or types occurring after the  
22 date of the notice. If a length of time passes after the notice  
23 so that there are two or less violations in the preceding  
24 25-month period, including violations upon which a penalty for  
25 repeated failures to pay taxes has been imposed, the notice  
26 expires. If penalties are subsequently imposed under subpart 3,  
27 the correctness of the notice may be appealed as indicated in  
28 subpart 4.

29 Subp. 3. **Amount of penalty.** After a taxpayer establishes  
30 a pattern of delinquencies that meets the criteria under subpart  
31 1, and the notice required by subpart 2 has been given, the  
32 penalty for future late payment violations is 25 percent of the  
33 amount of tax, as finally determined by the commissioner to be  
34 owing, that is not paid by the due date. The penalty is in  
35 addition to other applicable penalties or charges imposed by law.

36 Subp. 4. **Appeal rights.** If a 25 percent penalty is

1 imposed, the taxpayer may file a request for an abatement of the  
2 penalty on the ground that there is reasonable cause for the  
3 late payment upon which the penalty is imposed. Also, in the  
4 same time and manner as making a request for an abatement, the  
5 taxpayer may appeal the imposition of the penalty on the ground  
6 that the notice under subpart 2 is incorrect. The right to  
7 contest the notice does not include claiming that there was  
8 reasonable cause for the lateness of a late payment violation  
9 listed in the notice, if the time in which to request an  
10 abatement of the late payment penalty for that violation has  
11 expired. The procedure under this subpart is governed by  
12 Minnesota Statutes, section 270.07, subdivision 6.

13       Subp. 5. **Effective date.** For purposes of determining  
14 whether a taxpayer meets the criteria under subpart 1,  
15 violations for late payment of taxes can occur before or after  
16 the effective date of this part.