

**State of Minnesota
Department of Revenue**

**In the Matter of the Proposed Adoption
Without a Public Hearing of Permanent
Rules Governing Amended Returns**

**STATEMENT OF NEED
AND REASONABLENESS**

This document has been prepared to establish the statutory authority, need for, and reasonableness of the proposed parts governing returns made by the commissioner, orders of assessment issued when no return has been filed, and amended returns. It is submitted pursuant to Minn. Stat. § 14.23 (1990) and Minn. Rules, part 2010.0700 (1991) requiring a Statement of Need and Reasonableness.

In preparing this Statement of Need and Reasonableness, the Department has considered this part's impact on local public bodies, agricultural land, and small businesses. The proposed part will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

Minnesota Rules, part 8160.0300, Amended Returns

In 1990, Minn. Stat. § 290.391 which related to amended returns was repealed by Minn. Laws, ch. 480, art. 1, § 45. That statute provided that taxpayers could correct errors on their returns by filing amended returns. The term "amended return" referred to both returns which made corrections that increased taxpayers' liabilities and returns which made corrections that decreased taxpayers' liabilities. The statute, however, also stated that amended returns that decreased taxpayers' liabilities constituted claims for refund under Minn. Stat. § 290.50 (repealed 1990).

Currently, there is no provision directly analogous to Minn. Stat. § 290.391 (repealed 1990). Claims for refund are now governed exclusively by Minn. Stat. § 289A.50 (1990). Administratively, the Department allows taxpayers to correct errors which do not constitute claims for refund by filing amended returns (except where a

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taxpayer files an amended federal return, in which case the taxpayer is required to report the change. Minn. Stat. § 289A.38, subd. 7 (1990)). This practice is based on former statutory language and continued statutory reference to amended returns. (The date of assessment for an "amended return" is defined by Minn. Stat. § 270.65 (1990) and an "amended" return claiming overpayment constitutes a claim for refund under Minn. Stat. § 289A.50 (1990).)

This part is necessary to avoid any conflict between the statutory requirements relating to claims for refund and the administrative practice of accepting amended returns which do not show an overpayment.

Another related issue which this part clarifies is whether the commissioner must issue an order of assessment to establish a taxpayer's liability for any additional tax shown on an amended return. This issue has been raised by taxpayers. This part is necessary to clarify that taxpayers self-assess additional tax by filing an amended return.

Subpart Analysis.

Subpart 1. The part is limited to income, corporate franchise, and estate taxes because Minn. Stat. § 289A.50, subd. 1(b) (1990), limits the use of amended returns for claiming a refund to these tax types.

Subpart 2. The Internal Revenue Service's administrative practice requires that it accept a taxpayer's amended return if it is filed before the date prescribed for filing the original. *Haggar Co. v. Helvering*, 308 U.S. 389 (1940). The Department's adoption of this practice results in uniformity with the Internal Revenue Service practice and avoids discouraging early filing. If a taxpayer files a second return before the due date of the original return and the second return shows less tax liability than the original return, the taxpayer, without this provision, would have to follow the procedures for claiming a refund under Minn. Stat. § 289A.50 (1990) Those procedures include payment of the previously assessed tax in full.

Subpart 3. Under Minnesota law, taxpayers self-assess tax by filing returns. *See e.g.*, Minn. Stat. § 289A.08, subd. 10 (1990). It is reasonable that a correction made by a taxpayer which increases the taxpayer's liability also be accepted as a self-assessment because filing an amended return is a correction of the taxpayer's original self-assessment. Providing that a taxpayer's amended return establishes the taxpayer's liability is reasonable only in the case of additional tax, however, because allowing taxpayers to lower their liability by filing amended returns conflicts with statutory requirements for claiming a refund under Minn. Stat. § 289A.50 (1990).

Regardless of the requirements for claiming a refund under Minn. Stat. § 289A.50 (1990), the commissioner may respond to the additional information contained in an amended return claiming a refund by correcting any prior assessment. Minn. Stat. § 289A.35 (1990). A correction of this type may be made at the discretion of the commissioner, which is similar to the administrative practice of the Internal Revenue Service. *See, J.E. Riley Investment Co.*, 311 U.S. 55 (1940).

Subpart 4. This subpart restates statutory language found in Minn. Stat. § 270.65 (1990). The restatement of this language is necessary for a clear understanding of the part.

Subpart 5. Generally, the commissioner must assess tax within 3-1/2 years after the date a taxpayer files a return. Minn. Stat. § 289A.38, subd. 1 (1990). An additional assessment by the commissioner does not extend the time for assessment, so it is reasonable to conclude that a taxpayer's voluntary assessment of additional tax does not extend the time for assessment either.

Time limitations for collection run from the date of assessment. *See e.g.*, Minn. Stat. §§ 270.69 and 270.70 (1990). The date of assessment of the tax shown on an amended return is defined by Minn. Stat. § 270.65 (1990) as the date of the filing of the amended return. Since amended returns have no statutory due date, Minn. Stat. §

270.271, subd. 4 governs and the filing is the date the commissioner receives the amended return.

Subpart 6. Payment of tax is due at the time the return must be filed. Minn. Stat. § 289A.20 (1990). Since an amended return corrects an error on a prior return and payment of the amount of tax shown on the amended return should have been paid with the prior return, it is reasonable to expect payment with interest at the time the amended return is filed.

Penalties for late payment do not revert back to the original due date of the return, so that taxpayers are encouraged to correct their own mistakes by filing amended returns.

To eliminate any benefit a late filer would receive by inadvertently understating liability on a first return and subsequently filing a proper amended return, this subpart clarifies that penalties for failure to timely file are based on the final correct tax, which includes any amendments made by the taxpayer.