

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1663

02/25/2019 Authored by Lislegard and Davids
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; establishing a private letter ruling program; limiting assessment
1.3 authority of the commissioner of revenue; providing expanded authority to abate
1.4 penalties and taxes; modifying penalties; appropriating money; amending Minnesota
1.5 Statutes 2018, sections 270C.31, by adding a subdivision; 270C.33, by adding
1.6 subdivisions; 270C.34, subdivision 1; 270C.35, subdivision 4; 289A.40, subdivision
1.7 1; 289A.60, subdivision 1; proposing coding for new law in Minnesota Statutes,
1.8 chapter 270C.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. 270C.075 PRIVATE LETTER RULINGS.

1.11 Subdivision 1. **Program established.** By January 1, 2020, the commissioner shall, by
1.12 administrative rule adopted under chapter 14, establish and implement a program for issuing
1.13 private letter rulings to taxpayers to provide guidance as to how the commissioner will apply
1.14 Minnesota tax law to a specific transaction or proposed transaction, arrangement, or other
1.15 fact situation of the applying taxpayer. The commissioner must include in each ruling an
1.16 explanation of the reasoning for the determination. In establishing the terms of the program,
1.17 the commissioner may provide that rulings will not be issued in specified subject areas, for
1.18 categories of transactions, or under specified provisions of law, if the commissioner
1.19 determines doing so is in the best interests of the state and sound tax administration. The
1.20 program must include a process for the representative of a taxpayer to apply for a private
1.21 letter ruling and to communicate with the commissioner regarding the requested ruling.

1.22 Subd. 2. **Application procedure; fees.** (a) The commissioner shall establish an
1.23 application procedure and forms for a taxpayer or the taxpayer's appointed representative
1.24 to request a private letter ruling. The commissioner may require the taxpayer to provide any
1.25 supporting factual information and certifications that the commissioner determines necessary

2.1 or appropriate to issue a private letter ruling. The requirements may vary based on the type
2.2 of ruling requested.

2.3 (b) The commissioner may, in the administrative rule, establish a fee schedule to recover
2.4 the department's actual cost of preparing private letter rulings. The maximum fee per private
2.5 letter ruling is \$1,000. The commissioner may require the applicant to pay the required fee
2.6 for a private letter ruling before the application is considered. If the administrative rule
2.7 provides for payment of a fee as a condition for providing a private letter ruling, the rule
2.8 must provide a fee structure that varies the amount of the fee by the complexity of the request
2.9 or the number and type of issues or both.

2.10 (c) If the commissioner fails to issue a ruling to the taxpayer within 90 days after the
2.11 taxpayer's filing of a completed application, the commissioner must refund the application
2.12 fee to the taxpayer; however, the commissioner must issue a private letter ruling unless the
2.13 taxpayer withdraws the request.

2.14 (d) Any fees collected under this section must be deposited in the Revenue Department
2.15 service and recovery special revenue fund established under section 270C.15, and are
2.16 appropriated to the commissioner to offset the cost of issuing private letter rulings and
2.17 related administrative costs.

2.18 Subd. 3. **Effect.** (a) A private letter ruling is binding on the commissioner with respect
2.19 to the taxpayer to whom the ruling is issued if:

2.20 (1) there was no misstatement or omission of material facts in the application or other
2.21 information provided to the commissioner;

2.22 (2) the facts that subsequently developed were not materially different from the facts
2.23 upon which the ruling was based;

2.24 (3) the applicable statute, administrative rule, federal law referenced by state law, or
2.25 other relevant law has not changed; and

2.26 (4) the taxpayer acted in good faith in applying for and relying on the ruling.

2.27 (b) Private letter rulings have no precedential effect and may not be relied upon by a
2.28 taxpayer other than as provided in paragraph (a).

2.29 Subd. 4. **Public access.** The commissioner shall make private letter rulings issued under
2.30 this section available to the public on the department's website. The commissioner must
2.31 organize the private letter rulings by tax type and must make them available in a searchable
2.32 format. The published rulings must redact any information that would permit identification
2.33 of the requesting taxpayer.

3.1 Subd. 5. **Legislative report.** (a) By January 31 of each odd-numbered year, the
3.2 commissioner shall report in writing to the legislature the following information for the
3.3 immediately preceding two calendar years:

3.4 (1) the number of applications for private letter rulings;

3.5 (2) the number of private letter rulings issued, including the number issued within the
3.6 90-day time period under subdivision 2, paragraph (c);

3.7 (3) the amount of application fees refunded by tax type;

3.8 (4) the tax types for which rulings were requested;

3.9 (5) the types and characteristics of taxpayers applying for rulings; and

3.10 (6) any other information that the commissioner considers relevant to legislative oversight
3.11 of the private letter ruling program.

3.12 (b) The report must be filed as provided in section 3.195, and copies must be provided
3.13 to the chairs and ranking minority members of the committees of the house of representatives
3.14 and the senate with jurisdiction over taxes and appropriations to the Department of Revenue.

3.15 **EFFECTIVE DATE.** This section is effective the day following final enactment, except
3.16 that the first legislative report under subdivision 5 is due January 31, 2022.

3.17 Sec. 2. Minnesota Statutes 2018, section 270C.31, is amended by adding a subdivision to
3.18 read:

3.19 Subd. 8. **Authority to request dual examination.** (a) A qualified taxpayer that is subject
3.20 to an on-site examination or audit under this section of the amount of tax due under chapter
3.21 290 or 297A may request in writing that the commissioner conduct the examination or audit
3.22 of the taxpayer's tax due under both chapters at the same time. The request must be made
3.23 within days of the receipt of the commissioner's notice of intent to conduct the on-site
3.24 audit or examination in the form prescribed by the commissioner. If a qualified taxpayer
3.25 files a timely written request under this subdivision and the commissioner elects to audit or
3.26 examine the tax due under only one of the two chapters, the commissioner may not audit
3.27 or examine the tax due under the other chapter for each taxable year or period that includes
3.28 the taxable year or the period covered by the audit or examination that was conducted.

3.29 (b) For purposes of this subdivision, "qualified taxpayer" means a taxpayer that meets
3.30 each of the following requirements:

3.31 (1) the taxpayer has been issued a permit to collect tax under section 297A.84;

4.1 (2) the gross receipts of the taxpayer, as reported on the return filed under chapter 290
 4.2 for the most recent taxable year, is no more than \$..... In applying this clause to a taxpayer
 4.3 that is member of a unitary business, as defined in section 290.17, gross receipts include
 4.4 the gross receipts of all members of the unitary business; and

4.5 (3) the commissioner audited or examined the taxpayer's return filed under chapter 290
 4.6 or 297A or both for a period that ended no more than years prior to the taxable year or
 4.7 the period for which the qualified taxpayer made the request under this subdivision, and the
 4.8 commissioner determined that no more than the greater of (1) \$1,000 or (2) ... percent of
 4.9 the liability for tax in additional tax was owed by the taxpayer as a result of the audit or
 4.10 examination.

4.11 **EFFECTIVE DATE.** This section is effective for examinations and audits commenced
 4.12 after June 30, 2019.

4.13 Sec. 3. Minnesota Statutes 2018, section 270C.33, is amended by adding a subdivision to
 4.14 read:

4.15 Subd. 4a. **Limitations; sales taxes.** (a) The provisions of this subdivision are a limitation
 4.16 on the assessment authority of the commissioner under this section.

4.17 (b) The commissioner must not assess additional tax under chapter 297A if each of the
 4.18 following requirements are met:

4.19 (1) the tax reported by the taxpayer is consistent with and based on past reporting or
 4.20 other practices of the taxpayer that were fully disclosed to the commissioner and were
 4.21 specifically reviewed by the commissioner, including by issuing an audit assessing no
 4.22 additional tax liability with respect to that item for a prior taxable period; and

4.23 (2) effective for a taxable period beginning after the period covered by clause (1), neither
 4.24 the statute or administrative rule on which the reporting or other practice is based has been
 4.25 materially changed, nor has the commissioner issued a revenue notice or directly notified
 4.26 the taxpayer in writing of a change in the commissioner's position as to the proper reporting
 4.27 or other treatment of the relevant income, transaction, deduction, or other item.

4.28 (c) For an audit of a prior taxable period by the commissioner, paragraph (b), clause (1),
 4.29 applies only to issues within the scope of and specifically addressed by the audit.

4.30 **EFFECTIVE DATE.** This section is effective for assessments made after June 30,
 4.31 2019.

5.1 Sec. 4. Minnesota Statutes 2018, section 270C.33, is amended by adding a subdivision to
5.2 read:

5.3 Subd. 4b. **Limit on assessments; reasonable cause for failure to collect or withhold.** (a)
5.4 An assessment issued under subdivision 4 is reduced or eliminated to the extent that the
5.5 amount that would otherwise be assessed arose from the taxpayer's failure to collect or
5.6 withhold a tax from another individual or entity and the taxpayer had reasonable cause for
5.7 not collecting or withholding the tax. A taxpayer may raise this ground for prohibition of
5.8 an assessment during an audit, upon appeal from an assessment, or by refund claim following
5.9 payment of the assessment.

5.10 (b) For purposes of this subdivision and section 270C.35, subdivision 4:

5.11 (1) ignorance of the law is not reasonable cause;

5.12 (2) lack of clarity as to whether the law requires collection or withholding under the
5.13 circumstances may be reasonable cause; and

5.14 (3) failure to collect or withhold in accordance with prior written advice from the
5.15 commissioner on the specific question of the requirement to collect or withhold under the
5.16 same or similar circumstances that has not been superseded or preempted by a change in
5.17 statute or administrative rule or a subsequent written notice from the commissioner to the
5.18 taxpayer prior to commencement of the period for which the failure to collect or withhold
5.19 occurred is reasonable cause.

5.20 **EFFECTIVE DATE.** This section is effective for assessments made after June 30,
5.21 2019.

5.22 Sec. 5. Minnesota Statutes 2018, section 270C.34, subdivision 1, is amended to read:

5.23 Subdivision 1. **Authority.** (a) The commissioner may abate, reduce, or refund any penalty
5.24 or interest that is imposed by a law administered by the commissioner, or imposed by section
5.25 270.0725, subdivision 1 or 2, or 270.075, subdivision 2, as a result of the late payment of
5.26 tax or late filing of a return, or any part of an additional tax charge under section 289A.25,
5.27 subdivision 2, or 289A.26, subdivision 4, if the failure to timely pay the tax or failure to
5.28 timely file the return is due to reasonable cause, or if the taxpayer is located in a presidentially
5.29 declared disaster or in a presidentially declared state of emergency area or in an area declared
5.30 to be in a state of emergency by the governor under section 12.31.

5.31 (b) The commissioner shall abate any part of a penalty or additional tax charge under
5.32 section 289A.25, subdivision 2, or 289A.26, subdivision 4, attributable to erroneous advice

6.1 given to the taxpayer in writing by an employee of the department acting in an official
6.2 capacity, if the advice:

6.3 (1) was reasonably relied on and was in response to a specific written request of the
6.4 taxpayer; and

6.5 (2) was not the result of failure by the taxpayer to provide adequate or accurate
6.6 information.

6.7 (c) In addition to the authority under paragraphs (a) and (b), the commissioner may
6.8 decline to impose or may abate any penalty under section 289A.60 or other law, or an
6.9 additional tax charge under section 289A.25, subdivision 2, or 289A.26, subdivision 4.

6.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.11 Sec. 6. Minnesota Statutes 2018, section 270C.35, subdivision 4, is amended to read:

6.12 Subd. 4. **Time and content for administrative appeal.** Within 60 days after the notice
6.13 date, the taxpayer must file a written appeal with the commissioner. The appeal need not
6.14 be in any particular form but must contain the following information:

6.15 (1) name and address of the taxpayer;

6.16 (2) if a corporation, the state of incorporation of the taxpayer, and the principal place of
6.17 business of the corporation;

6.18 (3) the Minnesota identification number or Social Security number of the taxpayer;

6.19 (4) the type of tax involved;

6.20 (5) the date;

6.21 (6) the tax years or periods involved and the amount of tax involved for each year or
6.22 period;

6.23 (7) the findings in the notice that the taxpayer disputes;

6.24 (8) for a request to reduce or eliminate an assessment under section 270C.33, subdivision
6.25 4b, a statement of the taxpayer's grounds, along with a brief statement of the supporting
6.26 facts, for the assertion of reasonable cause for the failure to collect or withhold tax from
6.27 another individual or entity;

6.28 (9) a summary statement that the taxpayer relies on for each exception; and

6.29 ~~(9)~~ (10) the taxpayer's signature or signature of the taxpayer's duly authorized agent.

7.1 **EFFECTIVE DATE.** This section is effective for assessments made after June 30,
 7.2 2019.

7.3 Sec. 7. Minnesota Statutes 2018, section 289A.40, subdivision 1, is amended to read:

7.4 Subdivision 1. **Time limit; generally.** (a) Unless otherwise provided in this chapter, a
 7.5 claim for a refund of an overpayment of state tax must be filed within 3-1/2 years from the
 7.6 date prescribed for filing the return, plus any extension of time granted for filing the return,
 7.7 but only if filed within the extended time, or ~~one year from the date of an order assessing~~
 7.8 ~~tax under section 270C.33 or an order determining an appeal under section 270C.35,~~
 7.9 ~~subdivision 8, or one year from the date of a return made by the commissioner under section~~
 7.10 ~~270C.33, subdivision 3, upon payment in full of the tax, penalties, and interest shown on~~
 7.11 ~~the order or return made by the commissioner~~ two years from the time the tax was paid,
 7.12 whichever period expires later. ~~Claims for refund, except for taxes under chapter 297A,~~
 7.13 ~~filed after the 3-1/2 year period but within the one-year period are limited to the amount of~~
 7.14 ~~the tax, penalties, and interest on the order or return made by the commissioner and to issues~~
 7.15 ~~determined by the order or return made by the commissioner.~~

7.16 ~~In the case of assessments under section 289A.38, subdivision 5 or 6, claims for refund~~
 7.17 ~~under chapter 297A filed after the 3-1/2 year period but within the one-year period are~~
 7.18 ~~limited to the amount of the tax, penalties, and interest on the order or return made by the~~
 7.19 ~~commissioner that are due for the period before the 3-1/2 year period.~~

7.20 (b) For purposes of this subdivision, the amount of a refund is limited as follows:

7.21 (1) if the claim was filed by the taxpayer within 3-1/2 years from the date prescribed for
 7.22 filing the return, the refund shall not exceed the tax paid within the 3-1/2 year period
 7.23 immediately preceding the filing of the claim, plus any extension of time granted for filing
 7.24 the return, but only if the claim was filed within the extended time;

7.25 (2) if the claim was not filed within 3-1/2 years from the date prescribed for filing the
 7.26 return, the refund shall not exceed the tax paid during the two years immediately preceding
 7.27 the filing of the claim; and

7.28 (3) if no claim was filed, the refund shall not exceed the amount which would be
 7.29 allowable under clause (1) or (2), if the claim was filed on the date the refund is allowed.

7.30 (c) The prepayment of tax made by withholding of tax at the source or payment of
 7.31 estimated tax before the due date is considered paid on the last day prescribed by law for
 7.32 the payment of the tax by the taxpayer. A return filed before the due date is considered as

8.1 filed on the due date. An extended return filed before the extended due date is considered
8.2 as filed on the extended due date.

8.3 **EFFECTIVE DATE.** This section is effective for claims for refund filed after the day
8.4 following final enactment.

8.5 Sec. 8. Minnesota Statutes 2018, section 289A.60, subdivision 1, is amended to read:

8.6 Subdivision 1. **Penalty for failure to pay tax.** (a) If a corporate franchise, fiduciary
8.7 income, mining company, estate, partnership, S corporation, or nonresident entertainer tax
8.8 is not paid within the time specified for payment, a penalty of six percent is added to the
8.9 unpaid tax, except that if a corporation or mining company meets the requirements of section
8.10 289A.19, subdivision 2, the penalty is not imposed.

8.11 (b) For the taxes listed in paragraph (a), in addition to the penalty in that paragraph,
8.12 whether imposed or not, if a return or amended return is filed after the due date, without
8.13 regard to extensions, and any tax reported as remaining due is not remitted with the return
8.14 or amended return, a penalty of five percent of the tax not paid is added to the tax. If the
8.15 commissioner issues an order assessing additional tax for a tax listed in paragraph (a), and
8.16 the tax is not paid within 60 days after the mailing of the order or, if appealed, within 60
8.17 days after final resolution of the appeal, a penalty of five percent of the unpaid tax is added
8.18 to the tax.

8.19 (c) If an individual income tax is not paid within the time specified for payment, a penalty
8.20 of four percent is added to the unpaid tax. There is a presumption of reasonable cause for
8.21 the late payment if the individual: (i) pays by the due date of the return at least 90 percent
8.22 of the amount of tax, after credits other than withholding and estimated payments, shown
8.23 owing on the return; (ii) files the return within six months after the due date; and (iii) pays
8.24 the remaining balance of the reported tax when the return is filed.

8.25 (d) If the commissioner issues an order assessing additional individual income tax, and
8.26 the tax is not paid within 60 days after the mailing of the order or, if appealed, within 60
8.27 days after final resolution of the appeal, a penalty of four percent of the unpaid tax is added
8.28 to the tax.

8.29 (e) If a withholding or sales or use tax is not paid within the time specified for payment,
8.30 a penalty must be added to the amount required to be shown as tax. The penalty is five
8.31 percent of the tax not paid on or before the date specified for payment of the tax if the failure
8.32 is for not more than 30 days, with an additional penalty of five percent of the amount of tax

9.1 remaining unpaid during each additional 30 days or fraction of 30 days during which the
9.2 failure continues, not exceeding 15 percent in the aggregate.

9.3 (f) No penalty applies under this section if:

9.4 (1) the total calculated penalty that would otherwise apply under paragraphs (a) to (e)
9.5 is less than \$150; or

9.6 (2) for an underpayment of individual income tax under chapter 290 or sales tax under
9.7 chapter 297A, the liability for tax on which the penalty is calculated is less than \$1,000 and
9.8 the taxpayer timely filed any returns required to be filed during the prior three calendar
9.9 years and was not subject to a penalty under this section, determined without regard to the
9.10 provisions of this paragraph, for any taxes on returns due during that three-year period.

9.11 **EFFECTIVE DATE.** This section is effective for penalties imposed after June 30,
9.12 2019.

9.13 **Sec. 9. APPROPRIATION; PRIVATE LETTER RULING PROGRAM.**

9.14 \$..... in fiscal year 2020 and \$..... in fiscal year 2021 are appropriated from the general
9.15 fund to the commissioner of revenue to establish and administer the private letter ruling
9.16 program. The amount of these appropriations are reduced by any expenditures during the
9.17 applicable fiscal year by the commissioner under the appropriations from the special revenue
9.18 fund in Minnesota Statutes, section 270C.075, subdivision 2, paragraph (d).