

CHAPTER 8052
DEPARTMENT OF REVENUE
INCOME TAX DIVISION
ADMINISTRATIVE PROVISIONS

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8052.0100 AUDIT AND REVIEW.

If upon field examination of the taxpayer's books of account and records or after an office examination of an income tax return, facts are obtained which, in the opinion of the commissioner, warrant an adjustment of tax liability, a proposed assessment report is prepared and mailed to the taxpayer. This report contains a complete explanation of adjustments together with a recomputation of tax liability.

In the event the taxpayer acquiesces in the changes reflected in the proposed assessment report or fails to file a protest within 30 days after receipt thereof, the commissioner issues an order in accordance with the proposed assessment report, adding thereto statutory interest and penalty, if any.

In a case where a taxpayer does not acquiesce in the proposed assessment, he may file a protest within the 30-day period specified in the letter accompanying the proposed assessment report. With respect to the proper form to be used in filing such protest, see part 8052.0200. If after a review of the taxpayer's protest, the division is unable to acquiesce therein, the taxpayer will be afforded an opportunity to have a hearing before a representative of the division upon request. If the taxpayer and the division are in agreement after such hearing, either the proposed assessment will be canceled or an order of the commissioner will issue in accordance with the terms of the agreement. In case the taxpayer does not acquiesce in the position taken by the division, he may request a hearing with respect to the same issues before the commissioner of revenue. If the taxpayer does not desire such a hearing, an order will be issued immediately. If a hearing before the commissioner is requested and granted, an order will not be issued until such time as the commissioner has made a final determination.

With the exception of the provisions of Minnesota Statutes, sections 271.06, subdivision 5 and 271.12, the issuance of an order by the commissioner of revenue constitutes a final determination. The taxpayer is granted a period of 30 days from the date of the mailing of such order within which to file an appeal with the Tax Court of Appeals.

The procedure outlined in this rule shall not preclude the commissioner from imposing immediate assessments under circumstances where the statute of limitations is about to run with respect to any return, or where the commissioner has reasonable grounds for believing that the collection of any taxes, interest, or penalties due under this act will be jeopardized.

Every order of the commissioner shall take effect immediately upon the filing thereof and no appeal therefrom or review thereof shall stay the execution thereof or extend the time for the payment of any tax or other obligation unless otherwise expressly provided by law except that no order for refundment by the commissioner shall take effect until the time for appeal therefrom or review thereof by all parties entitled thereto has expired. For penalties and interest in the case of nonpayment within the 30-day period after the issuance of such order, see 2053 (1) and 2053 (2).

Statutory Authority: *MS s 290.52*

NOTE: Regulations 2053 (1) and 2053 (2) have been repealed.

8052.0200 FORM OF PROTEST.

The protest, of which there must be two copies, should be executed under oath, and should contain the following information:

- A. the name and address of the taxpayer;
- B. in the case of a corporation, the state of incorporation and the principal office or place of business;
- C. the designation by date and symbol of the letter informing the taxpayer of the changes with respect to which the protest is made;
- D. designation of the years involved and a statement of the amount of tax in dispute for each year;
- E. an itemized schedule of the findings to which the taxpayer takes exception;
- F. a summary statement of the grounds upon which the taxpayer relies in connection with each exception;
- G. in case the taxpayer desires a hearing, a statement to that effect; and
- H. in case the protest is prepared or filed by an attorney or agent, a statement written on the document itself as an endorsement and signed by the attorney or agent, showing whether or not he prepared it and whether or not he knows of his own knowledge that the facts therein are true.

Statutory Authority: *MS s 290.52*

8052.0300 PRACTICE OF ATTORNEYS, ACCOUNTANTS, AGENTS, AND PREPARERS BEFORE DEPARTMENT OF REVENUE.

Subpart 1. Practice defined. The term "practice" comprehends all matters connected with the presentation by an attorney, accountant, agent, or preparer to the Department of Revenue or any of its employees, upon filing an executed power of attorney, of a client's rights, privileges, or liabilities under Minnesota Statutes, chapter 290 or 290A, and the rules thereunder. "Practice" includes the preparation and filing of necessary documents, correspondence with and communication to the Department of Revenue, and the representation of a client at conferences, hearings, and meetings. However, the preparation and signing of a tax return, the appearance of an individual as a witness for a taxpayer, and the furnishing of information at the request of the Department of Revenue or any of its employees do not, of and by themselves, constitute practice before the department, unless these acts are coupled with the presentation of a client's case at conferences, hearings, or meetings. For purposes of this rule, the term "practice" is synonymous with "representation."

Subp. 2. Scope of representation pursuant to power of attorney. When authorized by the taxpayer through a written power of attorney, an attorney, accountant, agent, or preparer may appear as the taxpayer's representative, with or without the taxpayer, before an employee of the Department of Revenue with respect to the tax liability of the taxpayer for the type of tax and taxable year or period authorized in the power of attorney.

For purposes of this part, a power of attorney grants authority to deal with any of the following: original or amended individual income tax returns; property tax refund returns; fiduciary income tax returns; partnership returns of income; corporation income tax returns, including returns of small business corporations, life insurance companies, banks, and savings and loan associations; employer's income tax withholding returns or deposits; claims for refund; and estimated tax declarations.

A taxpayer representative may inspect only those state records, files, or documents which are either specifically listed, or directly or indirectly connected with matters specifically listed, in a power of attorney.

If the taxpayer is not present, a person presenting a power of attorney shall present identification satisfactory to the department employee.

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Subp. 3. Persons ineligible to practice. Any person who is:

- A. under disbarment or suspension from practice before the Department of Revenue;
- B. an employee of the Department of Revenue;
- C. under disbarment or suspension from practice as an attorney, certified public accountant, or licensed public accountant in the state of Minnesota; or
- D. under disbarment or suspension from practice before the Internal Revenue Service shall be ineligible to appear as a taxpayer representative under this part.

However, with regard to items C and D, a granting of reinstatement to practice as an attorney, certified public accountant, or licensed public accountant, or a granting of reinstatement to practice before the Internal Revenue Service shall automatically reinstate a person's eligibility to practice before the Department of Revenue.

Subp. 4. Standards of ethics and conduct. No attorney, accountant, agent, or preparer acting as a taxpayer representative shall neglect or refuse to submit records and information in any matter before the Department of Revenue, upon proper and lawful request by a duly authorized employee of the Department of Revenue, unless the taxpayer representative has a good faith belief that the information or testimony is privileged. No taxpayer representative shall interfere, or attempt to interfere, with any proper and lawful efforts by the Department of Revenue or its employees to obtain information relative to any matter before the Department of Revenue. Insisting upon a subpoena shall not be a violation of this subpart.

Each taxpayer representative shall exercise due diligence in regard to all of the following:

- A. preparing, assisting in the preparation of, approving, and filing returns, documents, affidavits, and any other papers relating to Department of Revenue matters to the extent of participation;
- B. determining the correctness of representations made by him to the Department of Revenue; and
- C. determining the correctness of representations made by him to clients with reference to any matter administered by the Department of Revenue.

Each taxpayer representative shall exercise good faith in determining the correctness of representations made by clients to him with reference to any matter administered by the Department of Revenue when the preparer or agent has reasonable grounds to believe the client's representations are false or inaccurate.

No taxpayer representative shall unreasonably delay the prompt disposition of any matter before the Department of Revenue.

Where there is a conflict between this part and a code of conduct which is promulgated by another agency or branch of government, that code of conduct shall control. The taxpayer representative must disclose to the department that there is a conflict.

Subp. 5. Incompetent conduct. Incompetent conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, means the failure by an attorney, accountant, agent, or preparer, after due warning has been given by the commissioner of revenue pursuant to subpart 7, item C, to:

- A. demonstrate the familiarity with the income tax statutes, rules, and forms necessary to enable the practitioner to properly apply, discuss, or complete them, and thus to render adequate services in connection with a taxpayer's case before the Department of Revenue; or
- B. exercise due diligence as required in subpart 4, second paragraph.

The standard used for determining failure to exercise due diligence shall be the common law standard of reasonableness used in determining negligence.

Subp. 6. Disreputable conduct. Disreputable conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, includes any conduct violative of subpart 4. In addition, the following acts or events constitute disreputable conduct:

A. Conviction of any criminal offense under a state or federal tax statute, or conviction of any crime involving dishonesty or breach of trust.

B. Preparing or filing for oneself or another a false or fraudulent Minnesota income tax return or other statement on which Minnesota income taxes or a refund thereof may be based, knowing it is false or fraudulent.

C. Willful failure to prepare or file a Minnesota income tax return for oneself or another in violation of the applicable income tax statutes or rules.

D. Willful failure to prepare and file an amended Minnesota income tax return for oneself, knowing that a material error or omission was made on the original return.

E. Willful failure to recommend to a client that an amended Minnesota income tax return be prepared and filed, knowing that a material error or omission was made on the original return.

F. Advising a client or a prospective client to adopt a Minnesota income tax evasion plan which is not legal, knowing that the plan is not legal.

G. Giving false testimony or information in any proceeding before the Department of Revenue, or before any tribunal authorized to pass upon Minnesota income tax matters, knowing it is false.

H. Filing any false or fraudulently altered document, affidavit, or power of attorney in any case or other proceeding before the Department of Revenue, or procuring the filing thereof, knowing it is false or fraudulently altered.

I. Using, with intent to deceive, false representations to procure employment in any case or proceeding before the Department of Revenue, including, but not limited to:

(1) misrepresentations regarding eligibility to practice before the Department of Revenue;

(2) specific material misrepresentations regarding experience or education, whether general or specialized, as an income tax return preparer;

(3) guaranteeing the payment of any tax refund or the allowance of any tax credit; or

(4) representing to a client that the attorney, accountant, agent, or preparer can improperly obtain special consideration or action from the Department of Revenue or an employee thereof, or that he has improper access to sources of information within the Department of Revenue which are otherwise private, confidential, or nonpublic.

J. Approving for filing, or advising or aiding in the preparation of, a false or fraudulent Minnesota income tax return prepared by some other person, knowing the return is false or fraudulent.

K. Misappropriation of, or failure to properly and promptly remit, funds received from a client for the purpose of paying taxes or other obligations due the state of Minnesota.

L. Endorsement or negotiation of a client's check in payment of a refund of any tax, credit, penalty, or interest administered by the commissioner of revenue, without the client's prior endorsement. The preceding sentence shall not apply when the full amount of the check is deposited in the taxpayer's bank account for the benefit of the taxpayer.

M. Charging a client a fee based upon a percentage of the refund that

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the client is eligible to receive from the state of Minnesota, unless representation of the client reaches the contested stage, either in a formal administrative hearing or a court proceeding.

N. Attempting to influence, or offering or agreeing to attempt to influence, the official action of any employee of the Department of Revenue by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor, or thing of value.

O. In connection with practice before the Department of Revenue, making false accusations or statements knowing them to be false, or circulating or publishing slanderous or libelous matter concerning the Department of Revenue or any of its employees.

P. Knowingly aiding and abetting another person to practice before the Department of Revenue during a period of disbarment or suspension of the other person.

Q. For purposes of items A to P, the phrases "income tax" and "income tax return" include all matters referred to in subpart 2, second paragraph.

Statutory Authority: *MS s 290.52*

8052.0400 DISBARMENT AND SUSPENSION PROCEDURES.

Subpart 1. Commission's power to suspend or disbar. Pursuant to Minnesota Statutes, section 290.52, the commissioner of revenue, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who is shown to be incompetent or disreputable; refuses to comply with the provisions of this rule; or in any manner willfully and knowingly defrauds, deceives, or misleads any taxpayer with respect to a claim or prospective claim involving the Department of Revenue.

Subp. 2. Reasons for suspension or disbarment. Any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue for violation of any of the provisions contained in part 8052.0300.

Subp. 3. Warning. Whenever the commissioner of revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has violated a provision of part 8052.0300, he shall notify the practitioner in writing of the specific violation which has been committed. The notification shall contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding for disbarment or suspension of the practitioner.

Subp. 4. Proceeding. Whenever the commissioner of revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has failed to comply with a warning by continuing to violate any provision of part 8052.0300, he shall commence a proceeding for disbarment or suspension of the attorney, accountant, agent, or preparer. The commissioner's notice of and order for hearing shall set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and shall make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding shall be governed by the procedure for contested case proceedings as provided in parts 1400.5200 to 1400.8500 and Minnesota Statutes, sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.69.

Subp. 5. Consent to suspension. An attorney, accountant, agent, or preparer, in order to avoid the commencement or conclusion of a disciplinary proceeding, may, by agreement with the commissioner of revenue, consent to suspension from practice before the Department of Revenue. The commissioner of revenue

shall then suspend the practitioner in accordance with the disciplinary guideline set forth in subpart 6.

Subp. 6. Disciplinary actions. Upon completion of the hearing in a contested case proceeding for disciplinary action brought by the commissioner of revenue against an attorney, accountant, agent, or preparer, if the administrative law judge finds that the practitioner has committed the violations specified in the commissioner's notice of and order for hearing, and that disciplinary action is appropriate, the commissioner shall:

A. suspend the practitioner from practicing before the Department of Revenue for a period of up to one year, if the proceeding brought against the practitioner is the first proceeding in which disciplinable misconduct has been found;

B. suspend the practitioner for a period of up to five years if the proceeding brought against the practitioner is the second proceeding in which the disciplinable misconduct has been found; or

C. disbar the practitioner from practicing before the Department of Revenue if the proceeding brought against the practitioner is at least the third proceeding in which disciplinable misconduct has been found.

For purposes of items A to C, a voluntary suspension pursuant to subpart 5 is a proceeding in which disciplinable misconduct has been found. The commissioner shall base his decision as to disciplinary action on all the facts before him, along with any extenuating circumstances he deems relevant.

Subp. 7. Effects of disbarment or suspension. If the commissioner's order against an attorney, accountant, agent, or preparer is for disbarment, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer is for suspension, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself. The disbarment or suspension of an individual, where the individual was employed by a firm or organization at the time his violation of this part occurred, shall not affect the right of other members of the firm or organization to practice before the department.

Subp. 8. Petition for reinstatement. If there has been a material change in circumstances after suspension or disbarment, a suspended or disbarred attorney, accountant, agent, or preparer may petition, in writing, the commissioner of revenue for reinstatement to practice before the Department of Revenue. The petition must be supported with documentation or testimony from a responsible third party as to the fitness, character, and ability of the practitioner to resume practice. The commissioner shall review the petition and make his determination within 30 days as to whether the practitioner shall be reinstated. If the petition is granted by the commissioner, the practitioner may resume practice. If the petition is denied by the commissioner, no further petitions may be brought by the practitioner during the remainder of the suspension period, or for a period of five years if the practitioner has been disbarred.

Statutory Authority: *MS s 290.52*

History: *L 1984 c 640 s 32; L 1987 c 384 art 2 s 1*