

CHAPTER 8052
DEPARTMENT OF REVENUE
PRACTICE BEFORE THE DEPARTMENT OF REVENUE

8052.0300 PRACTICE OF ATTORNEYS, ACCOUNTANTS, AGENTS, AND PREPARERS BEFORE DEPARTMENT OF REVENUE. 8052.0400 PROCEDURES TO BAR OR SUSPEND.

8052.0100 [Repealed, L 1990 c 480 art 1 s 45]

8052.0200 [Repealed, L 1990 c 480 art 1 s 45]

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, of a client's rights, privileges, or liabilities under a law administered by the commissioner as defined in Minnesota Statutes, section 270C.01, subdivision 5, 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," and the term "state tax" is synonymous with a tax or fee imposed by a "law administered by the commissioner."

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, 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. A written power of attorney is not required if the taxpayer is present. For purposes of this part, "written power of attorney" means the signed original or a copy of the signed original of any of the following:

- A. the power of attorney form designed and printed by the Department of Revenue;
- B. an Internal Revenue Service power of attorney if it is modified to include state taxes;
- C. a power of attorney under Minnesota Statutes, chapter 523, if it is filled out to include tax matters or generally to include all matters; or
- D. any other document which has all the necessary legal elements for creating a power of attorney and is broad enough to include tax matters or generally to include all matters.

For purposes of this part, a power of attorney grants authority to deal with any return as defined in Minnesota Statutes, section 270C.01, subdivision 8.

For taxes which are classified as private data on individuals or nonpublic data not on individuals, a taxpayer representative may inspect only those state records, files, or documents which are: (a) specifically listed in; (b) directly or indirectly connected with matters specifically listed in; or (c) covered by the terms of, a power of attorney. The signed power

of attorney form may be transmitted to the Department of Revenue by facsimile or by electronic transmission as an imaged attachment in a format that cannot be altered.

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

Subp. 3. **Persons ineligible to practice.** A person shall be ineligible to appear as a taxpayer representative under this part, if the person is:

- A. barred or suspended from practice before the Department of Revenue;
- B. an employee of the Department of Revenue;
- C. barred or suspended from practice as an attorney or certified public accountant in the state of Minnesota;
- D. barred or suspended from practice before the Internal Revenue Service; or
- E. a former employee of the Department of Revenue, to the extent provided in Minnesota Statutes, section 270C.10.

However, with regard to items C and D, a granting of reinstatement to practice as an attorney or certified 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 if the person is not otherwise ineligible under item A, B, or E.

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 or 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 to the Department of Revenue; and
- C. determining the correctness of representations made 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 the representative 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 may be barred or suspended 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 part 8052.0400, subpart 3, to:

A. demonstrate the familiarity with the state 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 may be barred or suspended from practice before the Department of Revenue, includes any conduct that violates 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 state tax return or other statement on which state taxes or a refund thereof may be based, knowing it is false or fraudulent.

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

D. Willful failure to prepare and file an amended state 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 state 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 state 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 state 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 a state 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 or she 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 state 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 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 that the other person is barred or suspended from practice.

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

Statutory Authority: *MS s 270.06; 270C.06; 270C.44; 290.52*

History: *17 SR 1279; L 1995 c 202 art 1 s 25; 26 SR 435; L 2005 c 151 art 1 s 114; 35 SR 1017*

8052.0400 PROCEDURES TO BAR OR SUSPEND.

Subpart 1. **Commissioner's power to suspend or bar.** Pursuant to Minnesota Statutes, section 270C.44, the commissioner of revenue, after due notice and opportunity for hearing, may suspend or bar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who is 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 to suspend or bar from practice.** Any attorney, accountant, agent, or preparer may be barred or suspended 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, subpart 5 or 6, the commissioner shall notify the practitioner in writing of the specific violation which has been committed. The notification must contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding to bar or suspend 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, the commissioner shall commence a proceeding to bar or suspend the attorney, accountant, agent, or preparer. The commissioner's notice of and order for hearing must set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and must make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding is governed by the procedure for contested case proceedings as provided in parts 1400.5010 to 1400.8400 and Minnesota Statutes, sections 14.02 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. bar 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 a decision as to disciplinary action on all the facts, along with any extenuating circumstances the commissioner deems relevant.

Subp. 7. **Effects of being barred or suspended.** If the commissioner's order against an attorney, accountant, agent, or preparer bars the practitioner, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself or herself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer suspends the practitioner, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself or herself. Barring or suspending an individual, who is employed by a firm or organization at the time a violation of this part occurred, does not affect the right of other members of the firm or organization to practice before the department.

Subp. 8. **Petition for reinstatement.** A suspended or barred attorney, accountant, agent, or preparer may petition, in writing, the commissioner of revenue for reinstatement to practice before the Department of Revenue if there has been a material change in circumstances after the practitioner has been suspended or barred. 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 a 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 barred.

Statutory Authority: *MS s 270.06; 270C.06; 290.52*

History: *L 1984 c 640 s 32; L 1987 c 384 art 2 s 1; 17 SR 1279; 26 SR 435; 26 SR 391; L 2005 c 151 art 1 s 114,116*