

8160.0630 ORDERS OF ASSESSMENT ISSUED WHEN NO RETURN HAS BEEN FILED.

Subpart 1. **Sending an order of assessment.** If a taxpayer fails to file a required return, the commissioner may send an order of assessment to the taxpayer under Minnesota Statutes, section 270C.33.

Subp. 2. **Status of the order of assessment and the taxpayer's return.** An order of assessment establishes the taxpayer's tax liability. The taxpayer, in any related action or proceeding, has the burden of establishing the incorrectness or invalidity of the order of assessment. The sending of an order of assessment does not satisfy the taxpayer's obligation to file a return. If the taxpayer files a return after an order of assessment has been sent, the taxpayer's obligation to file a return is satisfied, but the taxpayer's return does not establish a new tax liability (except to the extent that the tax shown on the taxpayer's return exceeds the tax shown on the order of assessment).

Subp. 3. **Limitation on time for assessment.** The period of limitations on assessment does not begin to run on the date of the order of assessment. The period of limitations on assessment begins to run on the date the taxpayer files a return. See Minnesota Statutes, section 289A.38.

Subp. 4. **Appealing the order of assessment.** A taxpayer may obtain reconsideration of an order of assessment through administrative review under Minnesota Statutes, section 270C.35, or may appeal to the tax court under Minnesota Statutes, section 271.06. If the taxpayer has not filed a return for the period for which administrative review is requested and the requirement to file is not in dispute, the taxpayer's written administrative appeal must include a return.

If the taxpayer fails to file a timely administrative appeal or a timely appeal to tax court, the taxpayer must pay the tax in full, but may file a claim for a refund under Minnesota Statutes, section 289A.50. If the taxpayer has not filed a return for the period for which a refund is claimed, a return must be filed as part of the refund claim.

Subp. 5. **Interest and penalties.** Interest payable to the commissioner under Minnesota Statutes, section 289A.55, subdivision 2, continues to accrue during the periods allowed for administrative review, appeal to tax court, and payment. Penalties for failure to make and file a return under Minnesota Statutes, section 289A.60, subdivision 2, continue to accrue until the taxpayer files a return for the tax type and period upon which the order is based. Penalties for failure to pay tax under Minnesota Statutes, section 289A.60, subdivision 1, continue to accrue until the taxpayer pays the amount assessed.

Subp. 6. **Collecting the assessment.** The periods of limitation on collection begin to run on the date of the order of assessment.

If, through administrative review or tax court appeal, the taxpayer meets the burden of establishing the invalidity of the order of assessment and the tax liability determined on review or appeal is less than or equal to the amount of tax shown on the order of assessment, the date of assessment remains the date of the order of assessment.

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

History: *17 SR 2106; 26 SR 435; L 2005 c 151 art 1 s 114,116*

Published Electronically: *November 14, 2006*