

## CHAPTER 289A

## TAX ADMINISTRATION AND COMPLIANCE

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**289A.02 DEFINITIONS.**

*[For text of subs 1 to 6, see M.S.2002]*

Subd. 7. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through June 15, 2003.

*[For text of subd 8, see M.S.2002]*

**History:** 2003 c 127 art 4 s 1; 1Sp2003 c 21 art 3 s 1

**289A.08 FILING REQUIREMENTS FOR INDIVIDUAL INCOME, FIDUCIARY INCOME, CORPORATE FRANCHISE, MINING COMPANY, AND ENTERTAINMENT TAXES.**

*[For text of subs 1 to 15, see M.S.2002]*

Subd. 16. **Tax refund or return preparers; electronic filing; paper filing fee imposed.** (a) A "tax refund or return preparer," as defined in section 289A.60, subdivision 13, paragraph (g), who prepared more than 500 Minnesota individual income tax returns for the prior calendar year must file all Minnesota individual income tax returns prepared for the current calendar year by electronic means.

(b) For tax returns prepared for the tax year beginning in 2001, the "500" in paragraph (a) is reduced to 250.

(c) For tax returns prepared for tax years beginning after December 31, 2001, the "500" in paragraph (a) is reduced to 100.

(d) Paragraph (a) does not apply to a return if the taxpayer has indicated on the return that the taxpayer did not want the return filed by electronic means.

(e) For each return that is not filed electronically by a tax refund or return preparer under this subdivision, including returns filed under paragraph (d), a paper filing fee of \$5 is imposed upon the preparer. The fee is collected from the preparer in the same manner as income tax. The fee does not apply to returns that the commissioner requires to be filed in paper form.

**History:** 1Sp2003 c 1 art 2 s 8I; 1Sp2003 c 21 art 11 s 12

**289A.10 FILING REQUIREMENTS FOR ESTATE TAX RETURNS.**

Subdivision 1. **Return required.** In the case of a decedent who has an interest in property with a situs in Minnesota, the personal representative must submit a Minnesota estate tax return to the commissioner, on a form prescribed by the commissioner, if:

(1) a federal estate tax return is required to be filed; or

(2) the federal gross estate exceeds \$700,000 for estates of decedents dying after December 31, 2001, and before January 1, 2004; \$850,000 for estates of decedents dying after December 31, 2003, and before January 1, 2005; \$950,000 for estates of decedents dying after December 31, 2004, and before January 1, 2006; and \$1,000,000 for estates of decedents dying after December 31, 2005.

The return must contain a computation of the Minnesota estate tax due. The return must be signed by the personal representative.

*[For text of subs 2 and 3, see M.S.2002]*

**History:** 2003 c 127 art 3 s 1

#### 289A.18 DUE DATES FOR FILING OF RETURNS.

*[For text of subs 1 to 3, see M.S.2002]*

Subd. 4. **Sales and use tax returns.** (a) Sales and use tax returns must be filed on or before the 20th day of the month following the close of the preceding reporting period, except that annual use tax returns provided for under section 289A.11, subdivision 1, must be filed by April 15 following the close of the calendar year, in the case of individuals. Annual use tax returns of businesses, including sole proprietorships, and annual sales tax returns must be filed by February 5 following the close of the calendar year.

(b) Returns for the June reporting period filed by retailers required to remit their June liability under section 289A.20, subdivision 4, paragraph (b), are due on or before August 20.

(c) If a retailer has an average sales and use tax liability, including local sales and use taxes administered by the commissioner, equal to or less than \$500 per month in any quarter of a calendar year, and has substantially complied with the tax laws during the preceding four calendar quarters, the retailer may request authorization to file and pay the taxes quarterly in subsequent calendar quarters. The authorization remains in effect during the period in which the retailer's quarterly returns reflect sales and use tax liabilities of less than \$1,500 and there is continued compliance with state tax laws.

(d) If a retailer has an average sales and use tax liability, including local sales and use taxes administered by the commissioner, equal to or less than \$100 per month during a calendar year, and has substantially complied with the tax laws during that period, the retailer may request authorization to file and pay the taxes annually in subsequent years. The authorization remains in effect during the period in which the retailer's annual returns reflect sales and use tax liabilities of less than \$1,200 and there is continued compliance with state tax laws.

(e) The commissioner may also grant quarterly or annual filing and payment authorizations to retailers if the commissioner concludes that the retailers' future tax liabilities will be less than the monthly totals identified in paragraphs (c) and (d). An authorization granted under this paragraph is subject to the same conditions as an authorization granted under paragraphs (c) and (d).

(f) A taxpayer who is a materials supplier may report gross receipts either on:

- (1) the cash basis as the consideration is received; or
- (2) the accrual basis as sales are made.

As used in this paragraph, "materials supplier" means a person who provides materials for the improvement of real property; who is primarily engaged in the sale of lumber and building materials-related products to owners, contractors, subcontractors, repairers, or consumers; who is authorized to file a mechanics lien upon real property and improvements under chapter 514; and who files with the commissioner an election to file sales and use tax returns on the basis of this paragraph.

(g) Notwithstanding paragraphs (a) to (f), a seller that is not a Model 1, 2, or 3 seller, as those terms are used in the Streamlined Sales and Use Tax Agreement, that does not have a legal requirement to register in Minnesota, and that is registered under the agreement, must file a return by February 5 following the close of the calendar year in which the seller initially registers, and must file subsequent returns on February 5 on an annual basis in succeeding years. Additionally, a return must be submitted on or before the 20th day of the month following any month by which sellers have accumulated state and local tax funds for the state in the amount of \$1,000 or more.

*[For text of subd 5, see M.S.2002]*

**History:** 2003 c 127 art 1 s 3

#### **289A.19 EXTENSIONS FOR FILING RETURNS.**

*[For text of subds 1 to 3, see M.S.2002]*

**Subd. 4. Estate tax returns.** When in the commissioner's judgment good cause exists, the commissioner may extend the time for filing an estate tax return for not more than six months. When an extension to file the federal estate tax return has been granted under section 6081 of the Internal Revenue Code, the time for filing the estate tax return is extended for that period.

*[For text of subd 5, see M.S.2002]*

**History:** 2003 c 127 art 3 s 2

#### **289A.20 DUE DATES FOR MAKING PAYMENTS OF TAX.**

*[For text of subds 1 to 3, see M.S.2002]*

**Subd. 4. Sales and use tax.** (a) The taxes imposed by chapter 297A are due and payable to the commissioner monthly on or before the 20th day of the month following the month in which the taxable event occurred, or following another reporting period as the commissioner prescribes or as allowed under section 289A.18, subdivision 4, paragraph (f) or (g), except that use taxes due on an annual use tax return as provided under section 289A.11, subdivision 1, are payable by April 15 following the close of the calendar year.

(b) A vendor having a liability of \$120,000 or more during a fiscal year ending June 30 must remit the June liability for the next year in the following manner:

(1) Two business days before June 30 of the year, the vendor must remit 85 percent of the estimated June liability to the commissioner.

(2) On or before August 20 of the year, the vendor must pay any additional amount of tax not remitted in June.

(c) A vendor having a liability of \$120,000 or more during a fiscal year ending June 30 must remit all liabilities on returns due for periods beginning in the subsequent calendar year by electronic means on or before the 20th day of the month following the month in which the taxable event occurred, or on or before the 20th day of the month following the month in which the sale is reported under section 289A.18, subdivision 4, except for 85 percent of the estimated June liability, which is due two business days before June 30. The remaining amount of the June liability is due on August 20.

*[For text of subd 5, see M.S.2002]*

**History:** 1Sp2003 c 21 art 8 s 2

#### **289A.31 LIABILITY FOR PAYMENT OF TAX.**

*[For text of subds 1 and 2, see M.S.2002]*

**Subd. 3. Transferees and fiduciaries.** The amounts of the following liabilities are, except as otherwise provided in section 289A.38, subdivision 13, assessed, collected, and paid in the same manner and subject to the same provisions and limitations as a deficiency in a tax imposed by chapter 290, including any provisions of law for the collection of taxes:

(1) the liability, at law or in equity, of a transferee of property of a taxpayer for tax or overpayment of a refund, including interest, additional amounts, and additions to the tax or overpayment provided by law, imposed upon the taxpayer by chapter 290 or provided for in chapter 290A; and

(2) the liability of a fiduciary under subdivision 4 for the payment of tax from the estate of the taxpayer. The liability may reflect the amount of tax shown on the return or any deficiency in tax.

**Subd. 4. Tax as a personal debt of a fiduciary.** A tax imposed by chapter 290 and an overpayment of a refund provided for in chapter 290A, and interest and penalties, is a personal debt of the taxpayer from the time the liability arises, regardless of when the time for discharging the liability by payment occurs. The debt is, in the case of the personal representative of the estate of a decedent and in the case of any fiduciary, that of the individual in the individual's official or fiduciary capacity only, unless the individual has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties, in which event the individual is personally liable for the deficiency.

*[For text of subs 5 and 6, see M.S.2002]*

**Subd. 7. Sales and use tax.** (a) The sales and use tax required to be collected by the retailer under chapter 297A constitutes a debt owed by the retailer to Minnesota, and the sums collected must be held as a special fund in trust for the state of Minnesota.

A retailer who does not maintain a place of business within this state as defined by section 297A.66, subdivision 1, shall not be indebted to Minnesota for amounts of tax that it was required to collect but did not collect unless the retailer knew or had been advised by the commissioner of its obligation to collect the tax.

(b) The use tax required to be paid by a purchaser is a debt owed by the purchaser to Minnesota.

(c) The tax imposed by chapter 297A, and interest and penalties, is a personal debt of the individual required to file a return from the time the liability arises, irrespective of when the time for payment of that liability occurs. The debt is, in the case of the executor or administrator of the estate of a decedent and in the case of a fiduciary, that of the individual in an official or fiduciary capacity unless the individual has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties, in which case the individual is personally liable for the deficiency.

(d) Liability for payment of sales and use taxes includes any responsible person or entity described in the personal liability provisions of section 270.101.

(e) Any amounts collected, even if erroneously or illegally collected, from a purchaser under a representation that they are taxes imposed under chapter 297A are state funds from the time of collection and must be reported on a return filed with the commissioner.

**Subd. 8. Liability of vendor for repayment of refund.** If an individual income tax refund resulting from claiming an education credit under section 290.0674 is paid by means of directly depositing the proceeds of the refund into a bank account controlled by the vendor of the product or service upon which the education credit is based, and the commissioner subsequently disallows the credit, the commissioner may seek repayment of the refund from the vendor. The amount of the repayment must be assessed and collected in the same time and manner as an erroneous refund under section 289A.37, subdivision 2.

**History:** 2003 c 127 art 3 s 3; art 8 s 7,8; 1Sp2003 c 21 art 8 s 3

## 289A.36 EXAMINATIONS; AUDITS AND COLLECTIONS.

*[For text of subs 1 to 6, see M.S.2002]*

**Subd. 7. Application to court for enforcement of subpoena.** (a) Disobedience of subpoenas issued under this section shall be punished by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

(b) Disobedience of a subpoena issued under subdivision 9 shall be punished by the District Court for Ramsey County in the same manner as contempt of the district court. In addition to contempt remedies, the court may issue any order the court deems reasonably necessary to enforce compliance with the subpoena.

*[For text of subd 8, see M.S.2002]*

**Subd. 9. Access to records in connection with examination of businesses located outside the state.** (a) In order to determine whether a business located outside the state of Minnesota is required to file a return under this chapter, the commissioner may examine the relevant records and files of the business.

(b) To the full extent permitted by the Minnesota and United States Constitutions, the commissioner may compel production of those relevant records and files by subpoena. The subpoena may be served on the secretary of state along with the address to which service of the subpoena is to be sent and a fee of \$50. The secretary of state shall forward a copy of the subpoena to the business using the procedures for service of process in section 5.25, subdivision 6.

(c) The commissioner shall pay the reasonable cost of producing records subject to subpoena under this subdivision if:

- (1) the subpoenaed party cannot produce the records without undue burden; and
- (2) the examination made pursuant to paragraph (a) shows that the subpoenaed party is not required to file a return under this chapter.

**Subd. 10. Penalty.** In addition to sanctions imposed under subdivision 7, a penalty of \$250 per day is imposed on any business that is in violation of a court order to comply with a subpoena that is seeking information necessary for the commissioner to be able to determine whether the business is required to file a return or pay a tax. The maximum penalty is \$25,000. Upon the request of the commissioner, the court shall determine the amount of the penalty and enter it as a judgment in favor of the commissioner. The penalty is not payable until the judgment is entered.

*History: 2003 c 127 art 8 s 9-11*

#### **289A.40 LIMITATIONS ON CLAIMS FOR REFUND.**

*[For text of subds 1 and 1a, see M.S.2002]*

**Subd. 2. Bad debt loss.** If a claim relates to an overpayment because of a failure to deduct a loss due to a bad debt or to a security becoming worthless, the claim is considered timely if filed within seven years from the date prescribed for the filing of the return. A claim relating to an overpayment of taxes under chapter 297A must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extensions granted for filing the return, but only if filed within the extended time. The refund or credit is limited to the amount of overpayment attributable to the loss. "Bad debt" for purposes of this subdivision, has the same meaning as that term is used in United States Code, title 26, section 166, except that the following are excluded from the calculation of bad debt: financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt; and repossessed property.

*[For text of subds 3 and 4, see M.S.2002]*

*History: 2003 c 127 art 1 s 4*

#### **289A.50 CLAIMS FOR REFUNDS.**

*[For text of subds 1 to 2, see M.S.2002]*

**Subd. 2a. Refund of sales tax to purchasers.** (a) If a vendor has collected from a purchaser a tax on a transaction that is not subject to the tax imposed by chapter 297A, the purchaser may apply directly to the commissioner for a refund under this section if:

(1) the purchaser is currently registered or was registered during the period of the claim, to collect and remit the sales tax or to remit the use tax; and

(2) either

(i) the amount of the refund to be applied for exceeds \$500, or

(ii) the amount of the refund to be applied for does not exceed \$500, but the purchaser also applies for a capital equipment claim at the same time, and the total of the two refunds exceeds \$500.

(b) The purchaser may not file more than two applications for refund under this subdivision in a calendar year.

**Subd. 2b. Certified service provider; bad debt claim.** A certified service provider, as defined in section 297A.995, subdivision 2, may claim on behalf of a taxpayer that is its client any bad debt allowance provided by section 297A.81. The certified service provider must credit or refund to its client the full amount of any bad debt allowance or refund received.

**Subd. 2c. Notice from purchaser to vendor requesting refund.** (a) If a vendor has collected from a purchaser a tax on a transaction that is not subject to the tax imposed by chapter 297A, the purchaser may seek from the vendor a return of over-collected sales or use taxes as follows:

(1) the purchaser must provide written notice to the vendor;

(2) the notice to the vendor must contain the information necessary to determine the validity of the request; and

(3) no cause of action against the vendor accrues until the vendor has had 60 days to respond to the written notice.

(b) In connection with a purchaser's request from a vendor of over-collected sales or use taxes, a vendor is presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the vendor: (1) uses a certified service provider as defined in section 297A.995, a certified automated system, as defined in section 297A.995, or a proprietary system that is certified by the state; and (2) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

*[For text of subs 3 to 10, see M.S.2002]*

**History:** 2003 c 127 art 1 s 5,6; art 6 s 1

## 289A.56 INTEREST ON OVERPAYMENTS.

*[For text of subs 1 and 2, see M.S.2002]*

**Subd. 3. Withholding tax, entertainer withholding tax, withholding from payments to out-of-state contractors, estate tax, and sales tax overpayments.** When a refund is due for overpayments of withholding tax, entertainer withholding tax, or withholding from payments to out-of-state contractors, interest is computed from the date of payment to the date the refund is paid or credited. For purposes of this subdivision, the date of payment is the later of the date the tax was finally due or was paid.

For the purposes of computing interest on estate tax refunds, interest is paid from the later of the date of overpayment, the date the estate tax return is due, or the date the original estate tax return is filed to the date the refund is paid.

For purposes of computing interest on sales and use tax refunds, interest is paid from the date of payment to the date the refund is paid or credited, if the refund claim includes a detailed schedule reflecting the tax periods covered in the claim. If the refund claim submitted does not include a detailed schedule reflecting the tax periods covered in the claim, interest is computed from the date the claim was filed.

**Subd. 4. Capital equipment and certain building materials refunds; refunds to purchasers.** Notwithstanding subdivision 3, for refunds payable under sections 297A.75, subdivision 1, and 289A.50, subdivision 2a, interest is computed from 90 days after the refund claim is filed with the commissioner.

[For text of subs 5 and 6, see M.S.2002]

**History:** 2003 c 127 art 1 s 7; art 3 s 4

## 289A.60 CIVIL PENALTIES.

[For text of subs 1 to 6, see M.S.2002]

Subd. 7. **Penalty for frivolous return.** If a taxpayer files what purports to be a tax return or a claim for refund but which does not contain information on which the substantial correctness of the purported return or claim for refund may be judged or contains information that on its face shows that the purported return or claim for refund is substantially incorrect and the conduct is due to a position that is frivolous or a desire that appears on the purported return or claim for refund to delay or impede the administration of Minnesota tax laws, then the individual shall pay a penalty of the greater of \$1,000 or 25 percent of the amount of tax required to be shown on the return. In a proceeding involving the issue of whether or not a person is liable for this penalty, the burden of proof is on the commissioner.

[For text of subs 8 to 14, see M.S.2002]

Subd. 15. **Accelerated payment of June sales tax liability; penalty for underpayment.** (a) For payments made after December 31, 2002, and before January 1, 2004, if a vendor is required by law to submit an estimation of June sales tax liabilities and 75 percent payment by a certain date, the vendor shall pay a penalty equal to ten percent of the amount of actual June liability required to be paid in June less the amount remitted in June. The penalty must not be imposed, however, if the amount remitted in June equals the lesser of 75 percent of the preceding May's liability or 75 percent of the average monthly liability for the previous calendar year.

(b) For payments made after December 31, 2003, if a vendor is required by law to submit an estimation of June sales tax liabilities and 85 percent payment by a certain date, the vendor shall pay a penalty equal to ten percent of the amount of actual June liability required to be paid in June less the amount remitted in June. The penalty must not be imposed, however, if the amount remitted in June equals the lesser of 85 percent of the preceding May's liability or 85 percent of the average monthly liability for the previous calendar year.

[For text of subs 16 to 24, see M.S.2002]

Subd. 25. **Penalty for failure to properly complete sales tax return.** A person who fails to report local sales tax on a sales tax return or who fails to report local sales tax on separate tax lines on the sales tax return is subject to a penalty of five percent of the amount of tax not properly reported on the return. A person who files a consolidated tax return but fails to report location information is subject to a \$500 penalty for each return not containing location information. In addition, the commissioner may revoke the privilege for a taxpayer to file consolidated returns and may require the taxpayer to separately register each location and to file a tax return for each location.

**History:** 1Sp2001 c 5 art 12 s 95; 2002 c 377 art 3 s 24; 2003 c 127 art 3 s 5; art 6 s 2,3; 1Sp2003 c 21 art 8 s 4,15