

CHAPTER 2971

INSURANCE TAXES

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2971.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, for the purposes of this chapter, the following terms have the meanings given them.

Subd. 2. **Association or associations.** "Association" or "associations" has the meaning given in section 60A.02, subdivision 1a.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of revenue of the state of Minnesota.

Subd. 4. **Community integrated service network.** "Community integrated service network" has the meaning given in section 62N.02, subdivision 4a.

Subd. 5. **Company or insurance company.** "Company" or "insurance company" has the meaning given in section 60A.02, subdivision 4.

Subd. 6. **Department of Revenue.** "Department of Revenue" means the Minnesota Department of Revenue or commissioner of revenue.

Subd. 7. **Domestic.** "Domestic" has the meaning given in section 60A.02, subdivision 5.

Subd. 8. **Foreign.** "Foreign" has the meaning given in section 60A.02, subdivision 6.

Subd. 9. **Gross premiums.** "Gross premiums" means total premiums paid by policyholders and applicants of policies, whether received in the form of money or other valuable consideration, on property, persons, lives, interests and other risks located, resident, or to be performed in this state, but excluding consideration and premiums for reinsurance assumed from other insurance companies. The term "gross premiums" includes the total consideration paid to bail bond agents for bail bonds. For title insurance companies, "gross premiums" means the charge for title insurance made by a title insurance company or its agents according to the company's rate filing approved by the commissioner of commerce without a deduction for commissions paid to or retained by the agent. Gross premiums of a title insurance company does not include any other charge or fee for abstracting, searching, or examining the title, or escrow, closing, or other related services. The term "gross premiums" includes any workers' compensation special compensation fund premium surcharge pursuant to section 176.129.

Subd. 10. **Health maintenance organization.** "Health maintenance organization" has the meaning given in section 62D.02, subdivision 4.

Subd. 11. **Nonprofit health service plan corporation.** "Nonprofit health service plan corporation" has the meaning given in section 62C.02, subdivision 6.

Subd. 12. **Insurance.** "Insurance" means the same as that term is defined in section 60A.02, subdivision 3.

Subd. 13. **Insurance agent or insurance agency.** "Insurance agent" or "insurance agency" has the meaning given in section 60A.02, subdivision 7.

Subd. 14. **Return premiums.** "Return premiums" means any dividend or any unused or unabsorbed portion of premium deposit or assessment that is applied toward the payment of any premium, premium deposit, or assessment due from the policyholder or member upon a continuance or renewal of the insurance on account of which the dividend was earned or premium deposit or assessment paid. Return premiums also includes any portion of premium returned by the company upon cancellation or termination of a policy or membership, except surrender values paid upon the cancellation and surrender of policies or certificates of life insurance.

Subd. 15. **State.** "State" has the meaning given in section 60A.02, subdivision 18.

Subd. 16. **Taxpayer.** "Taxpayer" means any insurance company, association, surplus lines licensee, automobile risk self-insurer, or insured or any other person or entity required to pay any amount due under this chapter.

History: 2000 c 394 art 1 s 1; 2003 c 127 art 7 s 12

2971.05 TAX IMPOSED.

Subdivision 1. **Domestic and foreign companies.** Except as otherwise provided in this section, a tax is imposed on every domestic and foreign insurance company. The rate of tax is equal to two percent of all gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 2. **Town and farmers' mutual insurance.** A tax is imposed on town and farmers' mutual insurance companies. The rate of tax is equal to one percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 3. **Mutual property and casualty companies with assets of \$5,000,000 or less at the end of the calendar year.** A tax is imposed on mutual property and casualty companies with assets of \$5,000,000 or less at the end of the calendar year. The rate of tax is equal to one percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 4. **Mutual property and casualty companies with total assets less than \$1,600,000,000 on December 31, 1989.** A tax is imposed on mutual property and casualty companies that had total assets greater than \$5,000,000 at the end of the calendar year but that had total assets less than \$1,600,000,000 on December 31, 1989. The rate of tax is equal to:

(1) two percent of gross premiums less return premiums on all direct business received by the insurer or agents of the insurer in Minnesota for life insurance, in cash or otherwise, during the year; and

(2) 1.26 percent of gross premiums less return premiums on all other direct business received by the insurer or agents of the insurer in Minnesota, in cash or otherwise, during the year.

Subd. 5. **Health maintenance organizations, nonprofit health service plan corporations, and community integrated service networks.** (a) Health maintenance organizations, community integrated service networks, and nonprofit health care service plan corporations are exempt from the tax imposed under this section for premiums received in calendar years 2001 to 2003.

(b) For calendar years after 2003, a tax is imposed on health maintenance organizations, community integrated service networks, and nonprofit health care service plan corporations. The rate of tax is equal to one percent of gross premiums less return premiums received in the calendar year.

(c) In approving the premium rates as required in sections 62L.08, subdivision 8, and 62A.65, subdivision 3, the commissioners of health and commerce shall ensure that any exemption from tax as described in paragraph (a) is reflected in the premium rate.

(d) The commissioner shall deposit all revenues, including penalties and interest, collected under this chapter from health maintenance organizations, community inte-

grated service networks, and nonprofit health service plan corporations in the health care access fund. Refunds of overpayments of tax imposed by this subdivision must be paid from the health care access fund. There is annually appropriated from the health care access fund to the commissioner the amount necessary to make any refunds of the tax imposed under this subdivision.

Subd. 6. **Fire insurance tax.** A tax is imposed on every licensed company, including reciprocals or interinsurance exchanges, doing business in this state, except farmers' mutual fire insurance companies and township fire insurance companies. The rate of tax is equal to one-half of one percent of the gross fire premiums and assessments, less return premiums, on all direct business received by the company in this state, or by its agents for it, in cash or otherwise, during the year. "Gross fire premiums and assessments" includes premiums on policies covering fire risks only on automobiles, whether written under floater form or otherwise.

Subd. 7. **Surplus lines tax.** (a) A tax is imposed on surplus lines licensees. The rate of tax is equal to three percent of the gross premiums less return premiums received by the licensee minus any licensee association operating assessments paid under section 60A.208.

(b) If surplus lines insurance placed by a surplus lines licensee and taxed under this subdivision covers a subject of insurance residing, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all of that insurance must be allocated according to the subjects of insurance residing, located, or to be performed in this state.

Subd. 8. [Repealed, 1Sp2001 c 5 art 13 s 15]

Subd. 9. **Tax on persons, firms, or corporations licensed to procure insurance from unlicensed foreign companies.** (a) A tax is imposed on any person, firm, or corporation licensed under section 60A.19, subdivision 8. The rate of tax is equal to two percent of gross premiums paid in the year less return premiums received in the year.

(b)(1) Money collected under this subdivision must be paid to a municipality or a fire department relief association if:

(i) the money is attributable to fire, lightning, or sprinkler insurance premiums paid by an owner to insure property; and

(ii) the property is in a municipality that has an organized fire department, a partly paid fire department, or a volunteer fire department.

The money must be paid to the municipality where the insured property is located, or to the municipality's fire department relief association. The money to be paid includes penalties and interest collected because a property owner failed to pay on time the taxes due under this subdivision.

(2) This paragraph does not apply to taxes paid under this subdivision that are attributable to premiums paid on property if:

(i) the property is owned and occupied exclusively as a homestead, and the owner carries insurance on the property; or

(ii) the property is exempt under section 550.37 and the owner carries insurance on the property.

Subd. 10. **Tax on persons, firms, or corporations procuring insurance from an ineligible company.** (a) A tax is imposed on each insured in this state who procures, causes to be procured, or continues or renews insurance with an ineligible surplus lines insurer or any self-insurer in this state who procures or continues excess of loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured pursuant to section 60A.201 or 60A.209, subdivision 1, equal to two percent of gross premiums less return premiums paid for such insurance.

(b) If the insurance described in paragraph (a) also covers a subject of insurance residing, located, or to be performed outside this state, for the purposes of this

subdivision, a proper pro rata portion of the entire premium payable for all of that insurance must be allocated according to the subjects of insurance residing, located, or to be performed in this state.

(c) For the purposes of this subdivision, insurance placed with an ineligible surplus lines insurer is considered to be procured, continued, or renewed in this state if:

(1) it was procured through negotiations occurring in whole or in part within or from outside this state;

(2) it was procured by an application made in whole or in part within or from outside this state; or

(3) premiums for it are paid from within this state directly or indirectly, in whole or in part.

Subd. 11. Retaliatory provisions. (a) If any other state or country imposes any taxes, fines, deposits, penalties, licenses, or fees upon any insurance companies of this state and their agents doing business in another state or country that are in addition to or in excess of those imposed by the laws of this state upon foreign insurance companies and their agents doing business in this state, the same taxes, fines, deposits, penalties, licenses, and fees are imposed upon every similar insurance company of that state or country and their agents doing or applying to do business in this state.

(b) If any conditions precedent to the right to do business in any other state or country are imposed by the laws of that state or country, beyond those imposed upon foreign companies by the laws of this state, the same conditions precedent are imposed upon every similar insurance company of that state or country and their agents doing or applying to do business in that state.

(c) For purposes of this subdivision, “taxes, fines, deposits, penalties, licenses, or fees” means an amount of money that is deposited in the general revenue fund of the state or other similar fund in another state or country and is not dedicated to a special purpose or use or money deposited in the general revenue fund of the state or other similar fund in another state or country and appropriated to the commissioner of commerce or insurance for the operation of the Department of Commerce or other similar agency with jurisdiction over insurance. Taxes, fines, deposits, penalties, licenses, or fees do not include:

(1) special purpose obligations or assessments imposed in connection with particular kinds of insurance, including but not limited to assessments imposed in connection with residual market mechanisms; or

(2) assessments made by the insurance guaranty association, life and health guarantee association, or similar association.

(d) This subdivision applies to taxes imposed under subdivisions 1, 3, 4, 6, and 12, paragraph (a), clauses (1) and (2).

(e) This subdivision does not apply to insurance companies organized or domiciled in a state or country, the laws of which do not impose retaliatory taxes, fines, deposits, penalties, licenses, or fees or which grant, on a reciprocal basis, exemptions from retaliatory taxes, fines, deposits, penalties, licenses, or fees to insurance companies domiciled in this state.

Subd. 12. Other entities. (a) A tax is imposed equal to two percent of:

(1) gross premiums less return premiums written for risks resident or located in Minnesota by a risk retention group;

(2) gross premiums less return premiums received by an attorney in fact acting in accordance with chapter 71A;

(3) gross premiums less return premiums received pursuant to assigned risk policies and contracts of coverage under chapter 79;

(4) the direct funded premium received by the reinsurance association under section 79.34 from self-insurers approved under section 176.181 and political subdivisions that self-insure;

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(5) gross premiums less return premiums received by a nonprofit health service plan corporation authorized under chapter 62C; and

(6) gross premiums less return premiums paid to an insurer other than a licensed insurance company or a surplus lines licensee for coverage of risks resident or located in Minnesota by a purchasing group or any members of the purchasing group to a broker or agent for the purchasing group.

(b) A tax is imposed on a joint self-insurance plan operating under chapter 60F. The rate of tax is equal to two percent of the total amount of claims paid during the fund year, with no deduction for claims wholly or partially reimbursed through stop-loss insurance.

(c) A tax is imposed on a joint self-insurance plan operating under chapter 62H. The rate of tax is equal to two percent of the total amount of claims paid during the fund's fiscal year, with no deduction for claims wholly or partially reimbursed through stop-loss insurance.

(d) A tax is imposed equal to the tax imposed under section 2971.05, subdivision 5, on the gross premiums less return premiums on all coverages received by an accountable provider network or agents of an accountable provider network in Minnesota, in cash or otherwise, during the year.

Subd. 13. Funds deposited into general fund. Unless otherwise specified in this chapter, all amounts collected by the commissioner under this chapter must be deposited in the general fund.

History: 2000 c 394 art 1 s 2; 2000 c 490 art 13 s 20; 1Sp2001 c 5 art 14 s 8; 2002 c 377 art 10 s 25; 2002 c 379 art 1 s 70

2971.10 SURCHARGE ON PREMIUMS TO RESTORE DEFICIENCY IN SPECIAL FUND.

Subdivision 1. Cities of the first class. (a) The commissioner shall order and direct a surcharge to be collected of two percent of the fire, lightning, and sprinkler leakage gross premiums, less return premiums, on all direct business received by any licensed foreign or domestic fire insurance company on property in a city of the first class, or by its agents for it, in cash or otherwise.

(b) By July 31 and December 31 of each year the commissioner of finance shall pay to the relief association in each city a warrant for an amount equal to the total amount of the surcharge on the premiums collected within the city since the previous payment.

(c) The treasurer of the relief association shall place the money received under this subdivision in the special fund of the relief association.

Subd. 2. [Repealed, 2002 c 392 art 1 s 9]

Subd. 3. Appropriation. The amount necessary to make the payments required under this section is appropriated to the commissioner of finance from the general fund.

History: 2000 c 394 art 1 s 3

2971.15 EXEMPTIONS FROM TAX.

Subdivision 1. Government payments. Premiums under the Minnesota comprehensive health insurance plan and all payments, revenues, and reimbursements received from the federal government for Medicare-related coverage as defined in section 62A.31, subdivision 3, are not subject to tax under this chapter.

Subd. 2. Minnesota employees insurance program. To the extent that the Minnesota employees insurance program under section 43A.317 operates as a self-insured group, the premiums paid to the program are exempt from the taxes imposed under this chapter, but are subject to a Minnesota Comprehensive Health Association assessment under section 62E.11.

Subd. 3. **Public employees insurance program.** Premiums paid to the public employees insurance program under section 43A.316 are exempt from the taxes imposed under this chapter.

Subd. 4. **Premiums paid to health carriers by state.** A health carrier as defined in section 62A.011 is exempt from the taxes imposed under this chapter on premiums paid to it by the state. Premiums paid by the state under medical assistance, general assistance medical care, and the MinnesotaCare program are not exempt under this subdivision.

Subd. 5. **Minnesota Insurance Guaranty Association.** The Minnesota Insurance Guaranty Association under chapter 60C is exempt from the taxes imposed under this chapter.

Subd. 6. **Minnesota Life and Health Guaranty Association.** The Minnesota Life and Health Guaranty Association under chapter 61B is exempt from the taxes imposed under this chapter.

Subd. 7. **Minnesota Comprehensive Health Association.** The Minnesota Comprehensive Health Association under chapter 62E is exempt from the taxes imposed under this chapter.

Subd. 8. **Writing carrier for the comprehensive health insurance plan.** Premiums received by the writing carrier for the comprehensive health insurance plan established under section 62E.10 in connection with that plan are exempt from the taxes imposed under this chapter.

Subd. 9. **Health Coverage Reinsurance Association.** The Health Coverage Reinsurance Association under chapter 62L is exempt from the taxes imposed under this chapter.

Subd. 10. **Premiums paid to fraternal benefit societies.** Premiums paid to fraternal benefit societies pursuant to chapter 64B are exempt from the taxes imposed under this chapter.

History: 2000 c 394 art 1 s 4; 1Sp2003 c 14 art 12 s 88,89

2971.20 OFFSETS AGAINST PREMIUM TAXES.

Subdivision 1. **Guaranty association assessment offsets.** (a) An insurance company may offset against its premium tax liability to this state any amount paid for assessments made for insolvencies which occur after July 31, 1994, under sections 60C.01 to 60C.22; and any amount paid for assessments made after July 31, 1994, under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or under sections 61B.18 to 61B.32 as follows:

(1) Each such assessment shall give rise to an amount of offset equal to 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid.

(2) The amount of offset initially determined for each taxable year is the sum of the amounts determined under clause (1) for that taxable year.

(b)(1) Each year the commissioner shall compare total guaranty association assessments levied over the preceding five calendar years to the sum of all premium tax and corporate franchise tax revenues collected from insurance companies, without reduction for any guaranty association assessment offset in the preceding calendar year, referred to in this subdivision as "preceding year insurance tax revenues."

(2) If total guaranty association assessments levied over the preceding five years exceed the preceding year insurance tax revenues, insurance companies must be allowed only a proportionate part of the premium tax offset calculated under paragraph (a) for the current calendar year.

(3) The proportionate part of the premium tax offset allowed in the current calendar year is determined by multiplying the amount calculated under paragraph (a) by a fraction. The numerator of the fraction equals the preceding year insurance tax revenues, and its denominator equals total guaranty association assessments levied over the preceding five-year period.

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(4) The proportionate part of the premium tax offset that is not allowed must be carried forward to subsequent tax years and added to the amount of premium tax offset calculated under paragraph (a) prior to application of the limitation imposed by this paragraph.

(5) Any amount carried forward from prior years must be allowed before allowance of the offset for the current year calculated under paragraph (a).

(6) The premium tax offset limitation must be calculated separately for (i) insurance companies subject to assessment under sections 60C.01 to 60C.22, and (ii) insurance companies subject to assessment under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or 61B.18 to 61B.32.

(7) When the premium tax offset is limited by this provision, the commissioner shall notify affected insurance companies on a timely basis for purposes of completing premium and corporate franchise tax returns.

(8) The guaranty associations created under sections 60C.01 to 60C.22, Minnesota Statutes 1992, sections 61B.01 to 61B.16, and 61B.18 to 61B.32, shall provide the commissioner with the necessary information on guaranty association assessments.

(c)(1) If the offset determined by the application of paragraphs (a) and (b) exceeds the insurance company's premium tax liability under this section prior to allowance of the credit for premium taxes, then the insurance company may carry forward the excess, referred to in this subdivision as the "carryforward credit" to subsequent taxable years.

(2) The carryforward credit is allowed as an offset against premium tax liability for the first succeeding year to the extent that the premium tax liability for that year exceeds the amount of the allowable offset for the year determined under paragraphs (a) and (b).

(3) The carryforward credit must be reduced, but not below zero, by the amount of the carryforward credit allowed as an offset against the premium tax under this paragraph. The remainder, if any, of the carryforward credit must be carried forward to succeeding taxable years until the entire carryforward credit has been credited against the insurance company's liability for premium tax under this chapter if applicable for that taxable year.

(d) When an insurer has offset against taxes its payment of an assessment of the Minnesota Life and Health Guaranty Association, and the association pays the insurer a refund with respect to the assessment under Minnesota Statutes 1992, section 61B.07, subdivision 6, or 61B.24, subdivision 6, then the refund reduces the insurer's carryforward credit under paragraph (c). If the refund exceeds the amount of the carryforward credit, the excess amount must be repaid to the state by the insurers to the extent of the offset in the manner the commissioner requires.

Subd. 2. **Joint Underwriting Association offset.** An assessment made pursuant to section 62I.06, subdivision 6, shall be deductible by the member from past or future premium taxes due the state.

History: 2000 c 394 art 1 s 5; 1Sp2001 c 5 art 9 s 25; 2003 c 127 art 7 s 13

297L.25 INFORMATION RETURNS.

Subdivision 1. **Licensed brokers or agents of risk retention groups.** To the extent licensed agents or brokers are utilized in accordance with section 60E.12, they shall report to the commissioner the premiums received for direct business for risks resident or located within this state which the licensees have placed with or on behalf of a risk retention group not chartered in this state.

Subd. 2. **Firetown and police premium reports.** To the extent required by section 69.021, each insurer shall file with the commissioner a Minnesota firetown premium report and Minnesota aid to police premium report.

History: 2000 c 394 art 1 s 6

297L.30 DUE DATES FOR FILING RETURNS.

Subdivision 1. **General rule.** On or before March 1, every insurer subject to taxation under section 297L.05, subdivisions 1 to 6, and 12, paragraphs (a), clauses (1) to (5), and (b), shall file an annual return for the preceding calendar year setting forth such information as the commissioner may reasonably require on forms prescribed by the commissioner.

Subd. 2. **Surplus lines licensees and purchasing groups.** On or before February 15 and August 15 of each year, every surplus lines licensee subject to taxation under section 297L.05, subdivision 7, and every purchasing group or member of a purchasing group subject to tax under section 297L.05, subdivision 12, paragraph (a), clause (6), shall file a return with the commissioner for the preceding six-month period ending December 31, or June 30, setting forth any information the commissioner reasonably prescribes on forms prescribed by the commissioner.

Subd. 3. [Repealed, 1Sp2001 c 5 art 13 s 15]

Subd. 4. **Persons, firms, or corporations licensed to procure insurance from unlicensed foreign companies.** On or before 30 days following the expiration date of a license issued under section 297L.05, subdivision 9, a person, firm, or corporation licensed to obtain insurance from a company not authorized to do business in Minnesota shall file a return with the commissioner for the preceding 12-month period setting forth any information the commissioner reasonably requires on forms prescribed by the commissioner.

Subd. 5. **Joint self-insurance plans.** On or before 60 days following the conclusion of their fiscal year, a plan subject to tax under section 297L.05, subdivision 12, paragraph (b) or (c), shall file a return with the commissioner for the preceding fiscal year setting forth any information the commissioner reasonably requires on forms prescribed by the commissioner.

Subd. 6. **Persons, firms, or corporations procuring insurance from an unlicensed foreign company.** Within 30 days after the date the insurance was procured, continued, or renewed, a taxpayer required to pay the tax under section 297L.05, subdivision 10, shall file a return setting forth any information the commissioner reasonably requires on forms prescribed by the commissioner.

Subd. 7. **Surcharge.** (a)(1) By April 30 of each year, every company required to pay the surcharge under section 297L.10, subdivision 1, shall file a return for the five-month period ending March 31 setting forth any information the commissioner reasonably requires on forms prescribed by the commissioner.

(2) By June 30 of each year, every company required to pay the surcharge under section 297L.10, subdivision 1, shall file a return for the two-month period ending May 31 setting forth any information the commissioner reasonably requires on forms prescribed by the commissioner.

(3) By November 30 of each year, every company required to pay the surcharge under section 297L.10, subdivision 1, shall file a return for the five-month period ending October 31 setting forth any information the commissioner reasonably requires on forms prescribed by the commissioner.

(b) By February 15 and August 15 of each year, every company required to pay a surcharge under section 297L.10, subdivision 2, must file a return for the preceding six-month period ending December 31 and June 30.

History: 2000 c 394 art 1 s 7; 2002 c 379 art 1 s 71,72

297L.35 PAYMENT OF TAX.

Subdivision 1. **General rule.** All taxes and surcharges imposed under this chapter must be paid to the commissioner by the date that the return must be filed under section 297L.30.

Subd. 2. **Electronic payments.** If the aggregate amount of tax and surcharges due under this chapter during a calendar year is equal to or exceeds \$120,000, or if the taxpayer is required to make payment of any other tax to the commissioner by

electronic means, then all tax and surcharge payments in the subsequent calendar year must be paid by electronic means.

History: 2000 c 394 art 1 s 8; 1Sp2001 c 5 art 17 s 19

297L.40 ESTIMATED TAX.

Subdivision 1. **Requirement to pay.** On or before March 15, June 15, September 15, and December 15 of the current year, every taxpayer subject to tax under section 297L.05, subdivisions 1 to 6, and 12, paragraphs (a), clauses (1) to (5), (b), and (c), must pay to the commissioner an installment equal to one-fourth of the insurer's total estimated tax for the current year.

Subd. 2. **Amount of required installment.** The amount of any required installment is one-fourth of the lesser of

- (1) 80 percent of the tax imposed for the current year, or
- (2) 100 percent of the tax paid for the previous year.

Subd. 3. **No addition to tax where the tax is small.** No addition to tax is imposed if the total tax for the current tax year is \$500 or less.

Subd. 4. **Addition to tax.** (a) In case of any underpayment of installments by an insurer, there is added to, and collected as part of, the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of underpayment.

(b) The amount of the underpayment is the excess of: (1) the amount of the installment; over (2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) The period of the underpayment runs from the date the installment was required to be paid to the earlier of:

- (1) March 1 of the year following the close of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this clause, a payment of estimated tax on any installment date is considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment required to be made on that date.

Subd. 5. **Definition of tax.** The term "tax" as used in this section means the tax imposed by section 297L.05, subdivisions 1 to 6, and 12, paragraphs (a), clauses (1) to (5), (b), and (c), without regard to the retaliatory provisions of section 297L.05, subdivision 11, and the offset in section 297L.20.

Subd. 6. **Failure to pay estimated tax.** When an insurer does not make any payments, the period of the underpayment runs from the three installment dates set forth in subdivision 1 to whichever of the periods in subdivision 4, paragraph (c), is the earlier.

Subd. 7. **March estimated payment.** A taxpayer who claims a refund of an overpayment on an original return may elect to have all or any portion of the overpayment applied as a credit to the March 15 estimated tax payment for the year following the year of the return. The credit is considered applied on March 15. Notwithstanding section 297L.80, the amount credited does not bear interest.

History: 2000 c 394 art 1 s 9; 1Sp2001 c 5 art 13 s 10-12

297L.45 ASSESSMENTS.

The commissioner shall make determinations, corrections, and assessments with respect to taxes and surcharges, including interest, additions to tax, and penalties. To determine the accuracy of a return, or in fixing liability for a tax or surcharge, the commissioner may make reasonable examinations or investigations of the taxpayer's records and accounts. If a taxpayer fails to file a required return, the commissioner,

from information in the commissioner's possession or obtainable by the commissioner, may make a return for the taxpayer.

History: 2000 c 394 art 1 s 10

297I.50 ORDER OF ASSESSMENT.

Subdivision 1. Order of assessment; notice and demand to taxpayer. (a) When a return has been filed and the commissioner determines that the tax or surcharge disclosed by the return is different than the tax or surcharge determined by the examination, the commissioner shall send an order of assessment to the taxpayer. When no return has been filed, the commissioner may make a return for the taxpayer under section 297I.45 or may send an order of assessment under this subdivision. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights. An order of assessment is final when made but may be reconsidered by the commissioner under section 297I.95.

(b) If a tax payment meets the requirements of this paragraph, the penalty under section 297I.85, subdivision 2, is not imposed, and the commissioner may not take any collection action, including the filing of liens under section 270.69.

To meet the requirements, the taxpayer must first file a return for the tax or surcharge type on which the order is based and then pay the amount shown on the order within the following time limits:

(1) If the taxpayer files an administrative appeal under section 297I.95 or a Tax Court appeal under chapter 271, and if the appeal is based on a constitutional challenge to the tax, the payment must be made within 60 days after final determination of the appeal.

(2) If the appeal is not based on a constitutional challenge, the payment must be made when the decision of the Tax Court is made.

(3) If the taxpayer does not file an appeal, the payment must be made within 60 days after the date the order is mailed to the taxpayer by the commissioner.

Subd. 2. Erroneous refunds. An erroneous refund is considered an underpayment of tax or surcharge on the date made. An assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund. If part of the refund was induced by fraud or misrepresentation of a material fact, the assessment may be made at any time.

Subd. 3. Assessment presumed valid. A return or assessment of tax or surcharge made by the commissioner is prima facie correct and valid. The taxpayer has the burden of establishing its incorrectness or invalidity in any related action or proceeding.

Subd. 4. Aggregate refund or assessment. The commissioner, on examining returns of a taxpayer for more than one year or period, may issue one order covering the period under examination that reflects the aggregate refund or additional tax or surcharge due.

Subd. 5. Sufficiency of notice. An order of assessment, sent postage prepaid by United States mail to the taxpayer at the taxpayer's last known address, is sufficient even if a corporation has terminated its existence, unless the department has been provided with a new address by a party authorized to receive notices of assessment.

History: 2000 c 394 art 1 s 11

297I.55 EXAMINATIONS; AUDITS AND COLLECTIONS.

Subdivision 1. Examination of taxpayer. To determine the accuracy of a return or report, or in fixing liability under this chapter, or for the purpose of collection, the commissioner may make reasonable examinations or investigations of a taxpayer's place of business; tangible personal property; equipment, computer systems and facilities; and pertinent books, records, papers, vouchers, computer printouts, accounts, and documents.

Subd. 2. Access to records of other persons in connection with examination of taxpayer. When conducting an investigation or an audit of a taxpayer, or for the

purpose of collection, the commissioner may, except where privileged by law, examine the relevant records and files of any state agency as well as any person, business, institution, financial institution, agency of the United States government, or agency of any other state where permitted by statute, agreement, or reciprocity. The commissioner may compel production of these records by subpoena. A subpoena may be served directly by the commissioner.

Subd. 3. **Power to compel testimony.** In the administration of this chapter, the commissioner may:

(1) administer oaths or affirmations and compel by subpoena the attendance of witnesses, testimony, and the production of a person's pertinent books, records, papers, or other data for inspection and copying; and

(2) examine under oath or affirmation any person regarding the business of any taxpayer concerning any relevant matter incident to the administration of this chapter. The fees of witnesses required by the commissioner to attend a hearing are equal to those allowed to witnesses appearing before courts of this state. The fees must be paid in the manner provided for the payment of other expenses incident to the administration of state tax law.

Subd. 4. **Third-party subpoena where taxpayer's identity is known.** An investigation may extend to a person that the commissioner determines has access to information that may be relevant to the examination or investigation. When a subpoena requiring the production of records as described in subdivision 2 is served on a third-party recordkeeper, written notice of the subpoena must be mailed to the taxpayer and to any other person who is identified in the subpoena. The notices must be given within three days of the day on which the subpoena is served. Notice to the taxpayer required by this section is sufficient if it is mailed to the last address on record with the commissioner.

The provisions of this subdivision relating to notice to the taxpayer or other parties identified in the subpoena do not apply if there is reasonable cause to believe that the giving of notice may lead to attempts to conceal, destroy, or alter records or assets relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

Subd. 5. **Third-party subpoena where taxpayer's identity is not known.** A subpoena that does not identify the person or persons whose tax or surcharge liability is being investigated may be served only if:

(1) the subpoena relates to the investigation of a particular person or ascertainable group or class of persons;

(2) there is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with laws administered by the commissioner;

(3) the information sought to be obtained from the examination of the records, and the identity of the person or persons with respect to whose liability the subpoena is issued, is not readily available from other sources;

(4) the subpoena is clear and specific concerning the information sought to be obtained; and

(5) the information sought to be obtained is limited solely to the scope of the investigation.

When a subpoena does not identify the person or persons with respect to whose tax or surcharge liability the subpoena is issued, the party served with the subpoena may petition for a determination concerning whether the commissioner has complied with clauses (1) to (5) and thus whether the subpoena is enforceable. The petitions must be to the district court in which the party is located. The petition must be filed within 20 days after service of the subpoena. If the party served does not petition within the time prescribed, the subpoena has the effect of a court order.

Subd. 6. **Request by taxpayer for subpoena.** When the commissioner has the power to issue a subpoena for investigative or auditing purposes, the commissioner shall honor a reasonable request by the taxpayer to issue a subpoena on the taxpayer's behalf, if in connection with the investigation or audit.

Subd. 7. **Application to court for enforcement of subpoena.** Disobedience of subpoenas issued under this section is punishable 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.

Subd. 8. **Cost of production of records.** The cost of producing records of a third party required by a subpoena must be paid by the taxpayer, if the taxpayer requests the subpoena to be issued, or if the taxpayer has the records available but has refused to provide them to the commissioner. In other cases where the taxpayer cannot produce records and the commissioner then initiates a subpoena for third-party records, the commissioner shall pay the reasonable cost of producing the records. The commissioner may later assess the reasonable costs against the taxpayer if the records contribute to the determination of an assessment of tax or surcharge against the taxpayer.

History: 2000 c 394 art 1 s 12

297L.60 CLAIMS FOR REFUND.

Subdivision 1. **General right to refund.** (a) Subject to the requirements of this section and section 297L.70, if a taxpayer has paid a tax or surcharge in excess of the amount due and files a written claim for refund, the commissioner shall refund or credit the overpayment determined by the commissioner to be erroneously paid.

(b) The claim must specify the name of the taxpayer, the date when and the period for which the tax or surcharge was paid, the kind of tax or surcharge paid, the amount that the taxpayer claims was erroneously paid, the grounds on which a refund is claimed, and other information relative to the payment. The claim must be in the form required by the commissioner. A return or amended return claiming an overpayment constitutes a claim for refund.

(c) The commissioner shall determine the amount of refund, if any, that is due, and notify the taxpayer of the determination as soon as practicable after a claim has been filed. Notice must be mailed to the taxpayer at the address stated upon the return or claim for refund.

(d) If the amount of tax or surcharge paid by the taxpayer exceeds the amount of tax or surcharge imposed on the taxpayer, the amount of excess is considered an overpayment even if in fact there was no liability with respect to which the amount was paid.

(e) When in the course of an examination and within the time for requesting a refund, the commissioner determines that there has been an overpayment of tax or surcharge, the commissioner shall refund or credit the amount of the overpayment to the taxpayer and no return is necessary.

(f) Notwithstanding any law to the contrary, the commissioner is not required to refund or credit any overpayment of less than one dollar.

(g) There is appropriated to the commissioner the amounts necessary to make refunds required by this section. The funds are appropriated from the same fund to which the tax or surcharge being refunded was originally deposited.

Subd. 2. **Remedies.** (a) If the taxpayer is notified that the refund claim is denied in whole or in part, the taxpayer may contest the denial by:

- (1) filing an administrative appeal with the commissioner under section 297L.95;
- (2) filing an appeal in Tax Court within 60 days of the date of the notice of denial;

or

- (3) filing an action in the district court to recover the refund.

(b) An action in the district court must be brought within 18 months following the date of the notice of denial. An action for refund of tax or surcharge must be brought in the district court of the district in which lies the taxpayer's principal place of business

or in the District Court for Ramsey County. If a taxpayer files a claim for refund and the commissioner has not issued a denial of the claim, the taxpayer may bring an action in the district court or the Tax Court at any time after the expiration of six months from the time the claim was filed.

History: 2000 c 394 art 1 s 13; 2001 c 7 s 61

297L.65 LIMITATIONS OF TIME FOR ASSESSMENT OF TAX.

Subdivision 1. **General rule.** Except as otherwise provided, the amount of taxes or surcharges assessable must be assessed within 3-1/2 years after the date the return is filed.

Subd. 2. **Filing date.** For purposes of this section, a return filed before the last day prescribed by law for filing the return is considered to be filed on the last day.

Subd. 3. **False or fraudulent return.** Notwithstanding the limitation under subdivision 1, the tax or surcharge may be assessed at any time if a false or fraudulent return is filed or when a taxpayer fails to file a return.

History: 2000 c 394 art 1 s 14

297L.70 LIMITATION ON CLAIMS FOR REFUND.

Except as provided in section 297L.75, a claim for refund of an overpayment must be filed within 3-1/2 years from the date prescribed for filing the return, or one year from the date of an order assessing tax or surcharge, or one year from the date of a return filed by the commissioner, upon payment in full of the tax, surcharge, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later. Claims for refund filed after the 3-1/2-year period but within the one-year period are limited to the amount of tax, surcharge, penalties, and interest on the order or return made by the commissioner and to issues determined by the order or return made by the commissioner.

History: 2000 c 394 art 1 s 15

297L.75 CONSENT TO EXTEND TIME.

If before the expiration of the time prescribed in sections 297L.65 and 297L.70 for the assessment of tax or surcharge or the filing of a claim for refund, the commissioner and the taxpayer have consented in writing to the assessment or filing of a claim for refund after that time, the tax or surcharge may be assessed at any time before the expiration of the agreed-upon period and a claim for refund may be paid at any time before the expiration of the agreed-upon period plus six months. The period may be extended by later agreements in writing before the expiration of the period previously agreed upon.

History: 2000 c 394 art 1 s 16

297L.80 INTEREST.

Subdivision 1. **Payable to the commissioner.** (a) When interest is required under this section, interest is computed at the rate specified in section 270.75.

(b) If a tax or surcharge is not paid within the time named by law for payment, the unpaid tax or surcharge bears interest from the date the tax or surcharge should have been paid until the date the tax or surcharge is paid.

(c) Whenever a taxpayer is liable for additional tax or surcharge because of a redetermination by the commissioner or other reason, the additional tax or surcharge bears interest from the time the tax or surcharge should have been paid until the date the tax or surcharge is paid.

(d) A penalty bears interest from the date the return or payment was required to be filed or paid to the date of payment of the penalty.

Subd. 2. **On overpayments.** (a) When interest is required under this section, interest is computed at the rate specified in section 270.76.

(b) Interest on an overpayment is computed from the date of the payment of the tax or surcharge until the date the refund is made. For purposes of this subdivision, any payment made before the last day prescribed by law to make the payment, including any estimated tax payments, is considered paid on the last day prescribed by law for the payment. A return filed before the due date is considered as filed on the due date.

History: 2000 c 394 art 1 s 17

2971.85 CIVIL PENALTIES.

Subdivision 1. **Late filing penalty.** If a taxpayer fails to file a return within the time prescribed, a penalty of five percent of the amount of tax or surcharge not timely paid is added to the tax or surcharge.

Subd. 2. **Late payment penalty.** If a taxpayer fails to pay a tax or surcharge within the time specified for payment, a penalty must be added to the amount required to be shown as tax or surcharge. The penalty is five percent of the tax or surcharge not paid on or before the date specified for payment of the tax or surcharge if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax or surcharge remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Subd. 3. **Intent to evade.** If a taxpayer, with intent to evade the tax or surcharge imposed by this chapter, fails to file any return required by this chapter, or with such intent files a false or fraudulent return, a penalty is imposed on the taxpayer. The penalty is equal to 50 percent of the tax or surcharge, less amounts paid by the taxpayer on the basis of the false or fraudulent return and is due for the period to which the return related.

Subd. 4. **Negligence or intentional disregard; penalty.** If any part of an additional assessment is due to negligence or intentional disregard of the statute or a rule but without intent to defraud, there is added to the tax or surcharge a penalty equal to ten percent of the additional assessment.

Subd. 5. **Payment of penalties.** The penalties imposed by this section must be collected and paid in the same manner as taxes.

Subd. 6. **Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

Subd. 7. **Penalty for failure to pay electronically.** In addition to other applicable penalties imposed by this section, if the commissioner notifies the taxpayer that payments are required to be made by electronic means, and the payments are made by some other means, a penalty is imposed. The amount of the penalty is equal to five percent of each payment that should have been paid electronically. After the commissioner's initial notification to the taxpayer that payments are required to be made by electronic means, the commissioner is not required to notify the taxpayer in subsequent periods if the initial notification specified the amount of tax liability at which a taxpayer is required to remit payments by electronic means. The penalty may be abated under the abatement procedures prescribed in section 270.07, subdivision 6, if the failure to pay electronically is due to reasonable cause.

History: 2000 c 394 art 1 s 18; 1Sp2001 c 5 art 17 s 20

2971.90 CRIMINAL PENALTIES.

Subdivision 1. **Penalties for knowing failure to file or pay; willful evasion.** (a) If a person is required to file with the commissioner a return, report, or other document, and that person fails to file it when required and does so knowingly, rather than accidentally, inadvertently, or negligently, that person is guilty of a gross misdemeanor.

(b) If a person is required to file with the commissioner a return, report, or other document, and that person willfully attempts in any manner to evade or defeat a tax or surcharge by failing to file it when required, that person is guilty of a felony.

(c) If a person is required to pay or to collect and remit a tax or surcharge, and that person knowingly, rather than accidentally, inadvertently, or negligently, fails to do so when required, that person is guilty of a gross misdemeanor.

(d) If a person is required to pay or to collect and remit a tax or surcharge, and that person willfully attempts to evade or defeat a tax or surcharge by failing to do so when required, that person is guilty of a felony.

Subd. 2. False or fraudulent returns; penalties. (a) A person who files with the commissioner a return, report, or other document known by the person to be fraudulent or false concerning a material matter is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud committed is with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.

History: 2000 c 394 art 1 s 19

2971.95 ADMINISTRATIVE APPEALS.

Subdivision 1. Taxpayer right to reconsideration. A taxpayer may obtain the commissioner's reconsideration of an order assessing tax or surcharge, a denial of a request for abatement of penalty or interest, or a denial of a claim for refund by filing an administrative appeal under subdivision 4. No reconsideration is allowed under this section if the action taken by the commissioner is the outcome of an administrative appeal.

Subd. 2. Appeal by taxpayer. A taxpayer who wishes to seek administrative review must follow the procedures in subdivision 4.

Subd. 3. Notice date. For purposes of this section, the term "notice date" means the date of the order adjusting the tax or surcharge or order denying a request for abatement, or, in the case of a denied refund, the date of the notice of denial.

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

- (1) name and address of the taxpayer;
- (2) if a corporation, the state of incorporation of the taxpayer, and the principal place of business of the corporation;
- (3) the Minnesota identification number or Social Security number of the taxpayer;
- (4) the type of tax or surcharge involved;
- (5) the date;
- (6) the tax years or periods involved and the amount of tax or surcharge involved for each year or period;
- (7) the findings in the notice that the taxpayer disputes;
- (8) a summary statement that the taxpayer relies on for each exception; and
- (9) the taxpayer's signature or signature of the taxpayer's duly authorized agent.

Subd. 5. Extensions. When requested in writing and within the time allowed for filing an administrative appeal, the commissioner may extend the time for filing an appeal for a period not more than 30 days after the expiration of the 60 days after the notice date.

Subd. 6. Determination of appeal. Based on applicable law and available information, the commissioner shall determine whether the appeal is valid. The commissioner shall find the appeal valid in whole, valid in part, or invalid, and shall notify the taxpayer of the decision. This notice must be in writing and must state the reasons for the determination.

Subd. 7. Agreement determining tax liability. When it appears to be in the best interests of the state, the commissioner may settle any taxes, surcharges, penalties, or interest that the commissioner has under consideration by virtue of an appeal filed

under this section. An agreement must be in writing and signed by the commissioner and the taxpayer, or by the taxpayer's representative authorized by the taxpayer to enter into an agreement. The agreement is final and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, the case must not be reopened as to the matters agreed upon.

Subd. 8. Appeal of an administrative determination. After deciding an appeal, the commissioner shall issue an order reflecting that decision. The order must be issued notwithstanding any statute of limitations for making assessments or other determinations. If the statute of limitations for making assessments or other determinations would have expired before the issuance of this order, except for this section, the order is limited to issues or matters contained in the appealed determination. The order is appealable to the Minnesota Tax Court under section 271.06.

Subd. 9. Appeal where no determination. If the commissioner does not make a determination within six months after the filing of an administrative appeal, the taxpayer may appeal to Tax Court.

Subd. 10. Exemption from Administrative Procedure Act. This section is not subject to the contested case procedures of chapter 14.

History: 2000 c 394 art 1 s 20