

CHAPTER 289A

ADMINISTRATION AND COMPLIANCE

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289A.02 DEFINITIONS.

[For text of subs 1 to 6, see M.S.2004]

Subd. 7. **Internal revenue code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through April 15, 2005.

[For text of subd 8, see M.S.2004]

History: 1Sp2005 c 3 art 4 s 1

289A.07 [Repealed, 2005 c 151 art 1 s 117]**289A.08 FILING REQUIREMENTS FOR INDIVIDUAL INCOME, FIDUCIARY INCOME, CORPORATE FRANCHISE, MINING COMPANY, AND ENTERTAINMENT TAXES.**

Subdivision 1. **Generally; individuals.** (a) A taxpayer must file a return for each taxable year the taxpayer is required to file a return under section 6012 of the Internal Revenue Code, except that:

(1) an individual who is not a Minnesota resident for any part of the year is not required to file a Minnesota income tax return if the individual's gross income derived from Minnesota sources as determined under sections 290.081, paragraph (a), and 290.17, is less than the filing requirements for a single individual who is a full year resident of Minnesota; and

(2) an individual who is a Minnesota resident is not required to file a Minnesota income tax return if the individual's gross income derived from Minnesota sources as determined under section 290.17, less the amount of the individual's gross income that consists of compensation paid to members of the armed forces of the United States or United Nations for active duty performed outside Minnesota, is less than the filing requirements for a single individual who is a full-year resident of Minnesota.

(b) The decedent's final income tax return, and other income tax returns for prior years where the decedent had gross income in excess of the minimum amount at which an individual is required to file and did not file, must be filed by the decedent's personal representative, if any. If there is no personal representative, the return or returns must be filed by the transferees, as defined in section 270C.58, subdivision 3, who receive property of the decedent.

(c) The term "gross income," as it is used in this section, has the same meaning given it in section 290.01, subdivision 20.

[For text of subd 2, see M.S.2004]

Subd. 3. **Corporations.** A corporation that is subject to the state's jurisdiction to tax under section 290.014, subdivision 5, must file a return, except that a foreign

operating corporation as defined in section 290.01, subdivision 6b, is not required to file a return. The commissioner shall adopt rules for the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined report. All members of an affiliated group that are required to file a combined report must file one return on behalf of the members of the group under rules adopted by the commissioner. If a corporation claims on a return that it has paid tax in excess of the amount of taxes lawfully due, that corporation must include on that return information necessary for payment of the tax in excess of the amount lawfully due by electronic means.

[For text of subs 4 to 6, see M.S.2004]

Subd. 7. Composite income tax returns for nonresident partners, shareholders, and beneficiaries. (a) The commissioner may allow a partnership with nonresident partners to file a composite return and to pay the tax on behalf of nonresident partners who have no other Minnesota source income. This composite return must include the names, addresses, Social Security numbers, income allocation, and tax liability for the nonresident partners electing to be covered by the composite return.

(b) The computation of a partner's tax liability must be determined by multiplying the income allocated to that partner by the highest rate used to determine the tax liability for individuals under section 290.06, subdivision 2c. Nonbusiness deductions, standard deductions, or personal exemptions are not allowed.

(c) The partnership must submit a request to use this composite return filing method for nonresident partners. The requesting partnership must file a composite return in the form prescribed by the commissioner of revenue. The filing of a composite return is considered a request to use the composite return filing method.

(d) The electing partner must not have any Minnesota source income other than the income from the partnership and other electing partnerships. If it is determined that the electing partner has other Minnesota source income, the inclusion of the income and tax liability for that partner under this provision will not constitute a return to satisfy the requirements of subdivision 1. The tax paid for the individual as part of the composite return is allowed as a payment of the tax by the individual on the date on which the composite return payment was made. If the electing nonresident partner has no other Minnesota source income, filing of the composite return is a return for purposes of subdivision 1.

(e) This subdivision does not negate the requirement that an individual pay estimated tax if the individual's liability would exceed the requirements set forth in section 289A.25. A composite estimate may, however, be filed in a manner similar to and containing the information required under paragraph (a).

(f) If an electing partner's share of the partnership's gross income from Minnesota sources is less than the filing requirements for a nonresident under this subdivision, the tax liability is zero. However, a statement showing the partner's share of gross income must be included as part of the composite return.

(g) The election provided in this subdivision is only available to a partner who has no other Minnesota source income and who is either (1) a full-year nonresident individual or (2) a trust or estate that does not claim a deduction under either section 651 or 661 of the Internal Revenue Code.

(h) A corporation defined in section 290.9725 and its nonresident shareholders may make an election under this paragraph. The provisions covering the partnership apply to the corporation and the provisions applying to the partner apply to the shareholder.

(i) Estates and trusts distributing current income only and the nonresident individual beneficiaries of the estates or trusts may make an election under this paragraph. The provisions covering the partnership apply to the estate or trust. The provisions applying to the partner apply to the beneficiary.

(j) For the purposes of this subdivision, "income" means the partner's share of federal adjusted gross income from the partnership modified by the additions provided

in section 290.01; subdivision 19a, clauses (6) to (9) and (11), and the subtractions provided in: (i) section 290.01, subdivision 19b, clause (9), to the extent the amount is assignable or allocable to Minnesota under section 290.17; and (ii) section 290.01, subdivision 19b, clause (14). The subtraction allowed under section 290.01, subdivision 19b, clause (9), is only allowed on the composite tax computation to the extent the electing partner would have been allowed the subtraction.

[For text of subs 8 to 11, see M.S.2004]

Subd. 13. Long and short forms; local use tax instructions. The commissioner shall provide a long form individual income tax return and may provide a short form individual income tax return. The returns shall be in a form that is consistent with the provisions of chapter 290, notwithstanding any other law to the contrary. The nongame wildlife checkoff provided in section 290.431 and the dependent care credit provided in section 290.067 must be included on the short form. The commissioner must provide information on local use taxes in the individual income tax instruction booklet. The commissioner must provide this information in the same section of the booklet that provides information on the state use tax.

[For text of subs 14 and 15, see M.S.2004]

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 (h), who prepared more than 100 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) 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.

(c) For each return that is not filed electronically by a tax refund or return preparer under this subdivision, including returns filed under paragraph (b), 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: 2005 c 151 art 2 s 17; art 6 s 1; art 9 s 15; 1Sp2005 c 3 art 3 s 1-3

289A.11 FILING REQUIREMENTS FOR SALES AND USE TAX RETURNS.

Subdivision 1. Return required. Except as provided in section 289A.18; subdivision 4, for the month in which taxes imposed by chapter 297A are payable, or for which a return is due, a return for the preceding reporting period must be filed with the commissioner in the form and manner the commissioner prescribes. A person making sales at retail at two or more places of business may file a consolidated return subject to rules prescribed by the commissioner. In computing the dollar amount of items on the return, the amounts are rounded off to the nearest whole dollar, disregarding amounts less than 50 cents and increasing amounts of 50 cents to 99 cents to the next highest dollar.

Notwithstanding this subdivision, a person who is not required to hold a sales tax permit under chapter 297A and who makes annual purchases, for use in a trade or business, of less than \$18,500, or a person who is not required to hold a sales tax permit and who makes purchases for personal use, that are subject to the use tax imposed by section 297A.63, may file an annual use tax return on a form prescribed by the commissioner. If a person who qualifies for an annual use tax reporting period is required to obtain a sales tax permit or makes use tax purchases, for use in a trade or business, in excess of \$18,500 during the calendar year, the reporting period must be considered ended at the end of the month in which the permit is applied for or the purchase in excess of \$18,500 is made and a return must be filed for the preceding reporting period.

[For text of subs 2 and 3, see M.S.2004]

History: 1Sp2005 c 3 art 5 s 2

289A.121 TAX SHELTERS; SPECIAL RULES.

Subdivision 1. **Scope.** The provisions of this section apply to a tax shelter that:

- (1) is organized in this state;
- (2) is doing business in this state;
- (3) is deriving income from sources in this state; or
- (4) has one or more investors that are Minnesota taxpayers under chapter 290.

Subd. 2. **Definitions.** (a) For purposes of this section, the definitions under sections 6111, 6112, and 6707A of the Internal Revenue Code, including the regulations under those sections, apply.

(b) The term "tax shelter" means any reportable transaction as defined under section 6707A(c)(1) of the Internal Revenue Code.

Subd. 3. **Registration.** (a) Any material advisor required to register a tax shelter under section 6111 of the Internal Revenue Code must register the shelter with the commissioner.

(b) A material advisor subject to this subdivision must send a duplicate of the federal registration information, along with any other information the commissioner requires, to the commissioner not later than the day on which interests in that tax shelter are first offered for sale to Minnesota taxpayers.

(c) In addition to the requirements under paragraph (b), any listed transaction must be registered with the commissioner by the latest of:

- (1) 60 days after entering into the transaction;
- (2) 60 days after the transaction becomes a listed transaction; or
- (3) October 15, 2005.

Subd. 4. **Registration number.** (a) Any person required to register under section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury must file, within 30 days after requested by the commissioner, a statement of the registration number with the commissioner.

(b) Any person who sells or otherwise transfers an interest in a tax shelter must, in the same time and manner required under section 6111(b) of the Internal Revenue Code, furnish to each investor who purchases or otherwise acquires an interest in the tax shelter the identification number assigned under federal law to the tax shelter.

(c) Any person claiming any deduction, credit, or other tax benefit by reason of a tax shelter must include on the return on which the deduction, credit, or other benefit is claimed the identification number assigned under federal law to the tax shelter.

Subd. 5. **Reportable transactions.** (a) For each taxable year in which a taxpayer must make a return or a statement under Code of Federal Regulations, title 26, section 1.6011-4, for a reportable transaction, including a listed transaction, in which the taxpayer participated in a taxable year for which a return is required under chapter 290, the taxpayer must file a copy of the disclosure with the commissioner.

(b) Any taxpayer that is a member of a unitary business group that includes any person that must make a disclosure statement under Code of Federal Regulations, title 26, section 1.6011-4, must file a disclosure under this subdivision.

(c) Disclosure under this subdivision is required for any transaction entered into after December 31, 2001, that the Internal Revenue Service determines is a listed transaction at any time, and must be made in the manner prescribed by the commissioner. For transactions in which the taxpayer participated for taxable years ending before December 31, 2005, disclosure must be made by the due date of the first return required under chapter 290 that occurs 60 days or more after July 14, 2005. With respect to transactions in which the taxpayer participated for taxable years ending on

and after December 31, 2005, disclosure must be made in the time and manner prescribed in Code of Federal Regulations, title 26, section 1.6011-4(e).

(d) Notwithstanding paragraphs (a) to (c), no disclosure is required for transactions entered into after December 31, 2001, and before January 1, 2006, if (1) the taxpayer has filed an amended income tax return which reverses the tax benefits of the tax shelter transaction, or (2) as a result of a federal audit the Internal Revenue Service has determined the tax treatment of the transaction and an amended return has been filed to reflect the federal treatment.

Subd. 6. **Lists of investors.** (a) Any person required to maintain a list under section 6112 of the Internal Revenue Code with respect to any reportable transaction must furnish the list to the commissioner no later than when required under federal law. The list required under this subdivision must include the same information required with respect to a reportable transaction under section 6112 of the Internal Revenue Code, and any other information the commissioner requires.

(b) For transactions entered into on or after December 31, 2001, that become listed transactions at any time, the list must be furnished to the commissioner by the latest of:

- (1) 60 days after entering into the transaction;
- (2) 60 days after the transaction becomes a listed transaction; or
- (3) October 15, 2005.

History: 1Sp2005 c 3 art 8 s 2

289A.13 [Repealed, 2005 c 151 art 1 s 117]

289A.18 DUE DATES FOR FILING OF RETURNS.

Subdivision 1. **Individual income, fiduciary income, corporate franchise, and entertainment taxes; partnership and s corporation returns; information returns; mining company returns.** The returns required to be made under sections 289A.08 and 289A.12 must be filed at the following times:

(1) returns made on the basis of the calendar year must be filed on April 15 following the close of the calendar year, except that returns of corporations must be filed on March 15 following the close of the calendar year;

(2) returns made on the basis of the fiscal year must be filed on the 15th day of the fourth month following the close of the fiscal year, except that returns of corporations must be filed on the 15th day of the third month following the close of the fiscal year;

(3) returns for a fractional part of a year must be filed on the 15th day of the fourth month following the end of the month in which falls the last day of the period for which the return is made, except that the returns of corporations must be filed on the 15th day of the third month following the end of the tax year of the unitary group in which falls the last day of the period for which the return is made;

(4) in the case of a final return of a decedent for a fractional part of a year, the return must be filed on the 15th day of the fourth month following the close of the 12-month period that began with the first day of that fractional part of a year;

(5) in the case of the return of a cooperative association, returns must be filed on or before the 15th day of the ninth month following the close of the taxable year;

(6) if a corporation has been divested from a unitary group and files a return for a fractional part of a year in which it was a member of a unitary business that files a combined report under section 290.34, subdivision 2, the divested corporation's return must be filed on the 15th day of the third month following the close of the common accounting period that includes the fractional year;

(7) returns of entertainment entities must be filed on April 15 following the close of the calendar year;

(8) returns required to be filed under section 289A.08, subdivision 4, must be filed on the 15th day of the fifth month following the close of the taxable year;

(9) returns of mining companies must be filed on May 1 following the close of the calendar year; and

(10) returns required to be filed with the commissioner under section 289A.12, subdivision 2, 4 to 10, or 14, must be filed within 30 days after being demanded by the commissioner.

[For text of subs 2 to 5, see M.S.2004]

History: 2005 c 151 art 6 s 2

289A.19 EXTENSIONS FOR FILING RETURNS.

[For text of subd 1, see M.S.2004]

Subd. 2. Corporate franchise and mining company taxes. Corporations or mining companies shall receive an extension of seven months for filing the return of a corporation subject to tax under chapter 290 or for filing the return of a mining company subject to tax under sections 298.01 and 298.015. Interest on any balance of tax not paid when the regularly required return is due must be paid at the rate specified in section 270C.40, from the date such payment should have been made if no extension was granted, until the date of payment of such tax.

If a corporation or mining company does not:

(1) pay at least 90 percent of the amount of tax shown on the return on or before the regular due date of the return, the penalty prescribed by section 289A.60, subdivision 1, shall be imposed on the unpaid balance of tax; or

(2) pay the balance due shown on the regularly required return on or before the extended due date of the return, the penalty prescribed by section 289A.60, subdivision 1, shall be imposed on the unpaid balance of tax from the original due date of the return.

[For text of subd 3, see M.S.2004]

Subd. 4. Estate tax returns. 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. If the estate requests an extension to file an estate tax return within the time provided in section 289A.18, subdivision 3, the commissioner shall extend the time for filing the estate tax return for six months.

[For text of subd 5, see M.S.2004]

History: 2005 c 151 art 2 s 17; art 6 s 3

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

[For text of subd 1, see M.S.2004]

Subd. 2. Withholding from wages, entertainer withholding, withholding from payments to out-of-state contractors, and withholding by partnerships, small business corporations, trusts. (a) A tax required to be deducted and withheld during the quarterly period must be paid on or before the last day of the month following the close of the quarterly period, unless an earlier time for payment is provided. A tax required to be deducted and withheld from compensation of an entertainer and from a payment to an out-of-state contractor must be paid on or before the date the return for such tax must be filed under section 289A.18, subdivision 2. Taxes required to be deducted and withheld by partnerships, S corporations, and trusts must be paid on a quarterly basis as estimated taxes under section 289A.25 for partnerships and trusts and under section 289A.26 for S corporations.

(b) An employer who, during the previous quarter, withheld more than \$1,500 of tax under section 290.92, subdivision 2a or 3, or 290.923, subdivision 2, must deposit tax withheld under those sections with the commissioner within the time allowed to deposit the employer's federal withheld employment taxes under Code of Federal Regulations,

title 26, section 31.6302-1, as amended through December 31, 2001, without regard to the safe harbor or de minimis rules in subparagraph (f) or the one-day rule in subsection (c), clause (3). Taxpayers must submit a copy of their federal notice of deposit status to the commissioner upon request by the commissioner.

(c) The commissioner may prescribe by rule other return periods or deposit requirements. In prescribing the reporting period, the commissioner may classify payors according to the amount of their tax liability and may adopt an appropriate reporting period for the class that the commissioner judges to be consistent with efficient tax collection. In no event will the duration of the reporting period be more than one year.

(d) If less than the correct amount of tax is paid to the commissioner, proper adjustments with respect to both the tax and the amount to be deducted must be made, without interest, in the manner and at the times the commissioner prescribes. If the underpayment cannot be adjusted, the amount of the underpayment will be assessed and collected in the manner and at the times the commissioner prescribes.

(e) If the aggregate amount of the tax withheld is:

(1) \$20,000 or more in the fiscal year ending June 30, 2005; or

(2) \$10,000 or more in the fiscal year ending June 30, 2006, and fiscal years thereafter,

the employer must remit each required deposit for wages paid in the subsequent calendar year by electronic means.

(f) A third-party bulk filer as defined in section 290.92, subdivision 30, paragraph (a), clause (2), who remits withholding deposits must remit all deposits by electronic means as provided in paragraph (e), regardless of the aggregate amount of tax withheld during a fiscal year for all of the employers.

[For text of subd 3, see M.S.2004]

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:

(1) \$20,000 or more in the fiscal year ending June 30, 2005; or

(2) \$10,000 or more in the fiscal year ending June 30, 2006, and fiscal years thereafter,

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.2004]

History: 1Sp2005 c 3 art 3 s 4; art 9 s 1,2

289A.25 PAYMENT OF ESTIMATED TAX BY INDIVIDUALS, TRUSTS, OR PARTNERSHIPS.

[For text of subd 1, see M.S.2004]

Subd. 2. **Additions to tax for underpayment.** (a) In the case of any underpayment of estimated tax by a taxpayer, except as provided in subdivision 6 or 7, there must be added to and become a part of the taxes imposed by chapter 290, for the taxable year an amount determined at the rate specified in section 270C.40 upon the amount of the underpayment for the period of the underpayment.

(b) For purposes of paragraph (a), the amount of underpayment shall be the excess of

(1) the amount of the installment required to be paid, over

(2) the amount, if any, of the installment paid on or before the last day prescribed for the payment.

[For text of subs 3 to 13, see M.S.2004]

History: 2005 c 151 art 2 s 17

289A.26 PAYMENT OF ESTIMATED TAX BY CORPORATIONS.

[For text of subs 1 and 2, see M.S.2004]

Subd. 2a. **Electronic payments.** If the aggregate amount of estimated tax payments made is:

(1) \$20,000 or more in the fiscal year ending June 30, 2005; or

(2) \$10,000 or more in the fiscal year ending June 30, 2006, and fiscal years thereafter,

all estimated tax payments in the subsequent calendar year must be paid by electronic means.

[For text of subd 3, see M.S.2004]

Subd. 4. **Underpayment of estimated tax.** If there is an underpayment of estimated tax by a corporation, there shall be added to the tax for the taxable year an amount determined at the rate in section 270C.40 on the amount of the underpayment, determined under subdivision 5, for the period of the underpayment determined under subdivision 6. This subdivision does not apply in the first taxable year that a corporation is subject to the tax imposed under section 290.02.

[For text of subs 5 to 11, see M.S.2004]

History: 2005 c 151 art 2 s 17; 1Sp2005 c 3 art 9 s 3

289A.31 LIABILITY FOR PAYMENT OF TAX.

Subdivision 1. **Individual income, fiduciary income, mining company, corporate franchise, and entertainment taxes.** (a) Individual income, fiduciary income, mining company, and corporate franchise taxes, and interest and penalties, must be paid by the taxpayer upon whom the tax is imposed, except in the following cases:

(1) The tax due from a decedent for that part of the taxable year in which the decedent died during which the decedent was alive and the taxes, interest, and penalty due for the prior years must be paid by the decedent's personal representative, if any. If there is no personal representative, the taxes, interest, and penalty must be paid by the transferees, as defined in section 270C.58, subdivision 3, to the extent they receive property from the decedent;

(2) The tax due from an infant or other incompetent person must be paid by the person's guardian or other person authorized or permitted by law to act for the person;

(3) The tax due from the estate of a decedent must be paid by the estate's personal representative;

(4) The tax due from a trust, including those within the definition of a corporation, as defined in section 290.01, subdivision 4, must be paid by a trustee; and

(5) The tax due from a taxpayer whose business or property is in charge of a receiver, trustee in bankruptcy, assignee, or other conservator, must be paid by the person in charge of the business or property so far as the tax is due to the income from the business or property.

(b) Entertainment taxes are the joint and several liability of the entertainer and the entertainment entity. The payor is liable to the state for the payment of the tax required to be deducted and withheld under section 290.9201, subdivision 7, and is not liable to the entertainer for the amount of the payment.

(c) The tax imposed under section 290.0922 on partnerships is the joint and several liability of the partnership and the general partners.

Subd. 2. Joint income tax returns. (a) If a joint income tax return is made by a husband and wife, the liability for the tax is joint and several. A spouse who qualifies for relief from a liability attributable to an underpayment under section 6015(b) of the Internal Revenue Code is relieved of the state income tax liability on the underpayment.

(b) In the case of individuals who were a husband and wife prior to the dissolution of their marriage or their legal separation, or prior to the death of one of the individuals, for tax liabilities reported on a joint or combined return, the liability of each person is limited to the proportion of the tax due on the return that equals that person's proportion of the total tax due if the husband and wife filed separate returns for the taxable year. This provision is effective only when the commissioner receives written notice of the marriage dissolution, legal separation, or death of a spouse from the husband or wife. No refund may be claimed by an ex-spouse, legally separated or widowed spouse for any taxes paid more than 60 days before receipt by the commissioner of the written notice.

(c) A request for calculation of separate liability pursuant to paragraph (b) for taxes reported on a return must be made within six years after the due date of the return. For calculation of separate liability for taxes assessed by the commissioner under section 289A.35 or 289A.37, the request must be made within six years after the date of assessment. The commissioner is not required to calculate separate liability if the remaining unpaid liability for which recalculation is requested is \$100 or less.

Subd. 3. [Repealed, 2005 c 151 art 1 s 117]

Subd. 4. [Repealed, 2005 c 151 art 1 s 117]

Subd. 5. Withholding tax, withholding from payments to out-of-state contractors, and withholding by partnerships and small business corporations. (a) Except as provided in paragraph (b), an employer or person withholding tax under section 290.92 or 290.923, subdivision 2, who fails to pay to or deposit with the commissioner a sum or sums required by those sections to be deducted, withheld, and paid, is personally and individually liable to the state for the sum or sums, and added penalties and interest, and is not liable to another person for that payment or payments. The sum or sums deducted and withheld under section 290.92, subdivision 2a or 3, or 290.923, subdivision 2, must be held as a special fund in trust for the state of Minnesota.

(b) If the employer or person withholding tax under section 290.92 or 290.923, subdivision 2, fails to deduct and withhold the tax in violation of those sections, and later the taxes against which the tax may be credited are paid, the tax required to be deducted and withheld will not be collected from the employer. This does not, however, relieve the employer from liability for any penalties and interest otherwise applicable for failure to deduct and withhold.

(c) Liability for payment of withholding taxes includes a responsible person or entity described in the personal liability provisions of section 270C.56.

(d) Liability for payment of withholding taxes includes a third party lender or surety described in section 270C.59.

(e) A partnership or S corporation required to withhold and remit tax under section 290.92, subdivisions 4b and 4c, is liable for payment of the tax to the commissioner, and a person having control of or responsibility for the withholding of the tax or the filing of returns due in connection with the tax is personally liable for the tax due.

(f) A payor of sums required to be withheld under section 290.9705, subdivision 1, is liable to the state for the amount required to be deducted, and is not liable to an out-of-state contractor for the amount of the payment.

Subd. 6. [Repealed, 2005 c 151 art 1 s 117]

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 270C.56.

(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.

[For text of subd 8, see M.S.2004]

History: 2005 c 151 art 2 s 17; art 6 s 4

289A.35 ASSESSMENTS ON RETURNS.

The commissioner may audit and adjust the taxpayer's computation of federal taxable income, items of federal tax preferences, or federal credit amounts to make them conform with the provisions of chapter 290 or section 298.01. If a return has been filed, the commissioner shall enter the liability reported on the return and may make any audit or investigation that is considered necessary.

History: 2005 c 151 art 2 s 8

289A.36 [Repealed, 2005 c 151 art 1 s 117]

289A.37 ASSESSMENTS; ERRONEOUS REFUNDS; JOINT INCOME TAX RETURNS.

Subdivision 1. [Repealed, 2005 c 151 art 1 s 117]

[For text of subd 2, see M.S.2004]

Subd. 3. [Repealed, 2005 c 151 art 1 s 117]

Subd. 4. [Repealed, 2005 c 151 art 1 s 117]

Subd. 5. [Repealed, 2005 c 151 art 1 s 117]

[For text of subd 6, see M.S.2004]

289A.38 LIMITATIONS ON TIME FOR ASSESSMENT OF TAX.

[For text of subds 1 to 5, see M.S.2004]

Subd. 6. **Omission in excess of 25 percent.** Additional taxes may be assessed within 6-1/2 years after the due date of the return or the date the return was filed, whichever is later, if:

- (1) the taxpayer omits from gross income an amount properly includable in it that is in excess of 25 percent of the amount of gross income stated in the return;
- (2) the taxpayer omits from a sales, use, or withholding tax return an amount of taxes in excess of 25 percent of the taxes reported in the return; or
- (3) the taxpayer omits from the gross estate assets in excess of 25 percent of the gross estate reported in the return.

Subd. 7. **Federal tax changes.** If the amount of income, items of tax preference, deductions, or credits for any year of a taxpayer as reported to the Internal Revenue Service is changed or corrected by the commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in income, items of tax preference, deductions, credits, or withholding tax, or, in the case of estate tax, where there are adjustments to the taxable estate resulting in a change to the credit for state death taxes, the taxpayer shall report the change or correction or renegotiation results in writing to the commissioner. The report must be submitted within 180 days after the final determination and must be in the form of either an amended Minnesota estate, withholding tax, corporate franchise tax, or income tax return conceding the accuracy of the federal determination or a letter detailing how the federal determination is incorrect or does not change the Minnesota tax. An amended Minnesota income tax return must be accompanied by an amended property tax refund return, if necessary. A taxpayer filing an amended federal tax return must also file a copy of the amended return with the commissioner of revenue within 180 days after filing the amended return.

[For text of subds 8 to 11, see M.S.2004]

Subd. 12. **Request for early audit for individual income, fiduciary income, mining company, and corporate franchise taxes.** (a) Tax must be assessed within 18 months after written request for an assessment has been made in the case of income received (1) during the lifetime of a decedent, (2) by the decedent's estate during the period of administration, (3) by a trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 270C.58, subdivision 2, or (4) by a mining company or a corporation. A proceeding in court for the collection of the tax must begin within two years after written request for the assessment (filed after the return is made and in the form the commissioner prescribes) by the personal representative or other fiduciary representing the estate of the decedent, or by the trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 270C.58, subdivision 2, or by the corporation. Except as provided in section 289A.42, subdivision 1, an assessment must not be made after the expiration of 3-1/2 years after the return was filed, and an action must not be brought after the expiration of four years after the return was filed.

(b) Paragraph (a) only applies in the case of a mining company or a corporation if:

- (1) the written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of the 18-month period;
- (2) the dissolution is begun in good faith before the expiration of the 18-month period; and
- (3) the dissolution is completed within the 18-month period.

Subd. 13. [Repealed, 2005 c 151 art 1 s 117]

[For text of subd 14, see M.S.2004]

Subd. 15. **Purchaser filed refund claims.** If a purchaser refund claim is filed under section 289A.50, subdivision 2a, and the basis for the claim is that the purchaser was improperly charged tax on an improvement to real property or on the purchase of nontaxable services, sales or use tax may be assessed for the cost of materials used to make the real property improvement or to perform the nontaxable service. The assessment may be made against the person making the improvement to real property or the sale of nontaxable services, within the period prescribed in subdivision 1, or within one year after the date of the refund order, whichever is later.

Subd. 16. **Reportable transactions.** (a) If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a reportable transaction, as required by federal law and under section 289A.121, the commissioner may recompute the tax, including a refund, within the later of:

(1) six years after the return is filed with respect to the taxable year in which the taxpayer participated in the reportable transaction; or

(2) for a listed transaction, as defined in section 289A.121, for which the taxpayer fails to include on any return or statement for any taxable year any information that is required under section 289A.121, one year after the earlier of:

(i) the date the taxpayer furnishes the required information to the commissioner; or

(ii) the date that a material advisor, as defined in section 289A.121, meets the requirements of section 289A.121, relating to the transaction with respect to the taxpayer.

(b) If tax is assessable solely because of this section, the assessable deficiency is limited to the items that were not disclosed as required under section 289A.121.

History: 2005 c 151 art 2 s 17; art 6 s 5; art 7 s 1,2; 1Sp2005 c 3 art 8 s 3.

289A.39 LIMITATIONS; ARMED SERVICES.

Subdivision 1. **Extensions for service members.** (a) The limitations of time provided by this chapter, chapter 290 relating to income taxes, chapter 271 relating to the Tax Court for filing returns, paying taxes, claiming refunds, commencing action thereon, appealing to the Tax Court from orders relating to income taxes, and the filing of petitions under chapter 278 that would otherwise be due prior to May 1 of the year in which the taxes are payable, and appealing to the Supreme Court from decisions of the Tax Court relating to income taxes are extended, as provided in section 7508 of the Internal Revenue Code.

(b) If a member of the National Guard or reserves is called to active duty in the armed forces, the limitations of time provided by this chapter and chapters 290 and 290A relating to income taxes and claims for property tax refunds are extended by the following period of time:

(1) in the case of an individual whose active service is in the United States, six months; or

(2) in the case of an individual whose active service includes service abroad, the period of initial service plus six months.

Nothing in this paragraph reduces the time within which an act is required or permitted under paragraph (a).

(c) If an individual entitled to the benefit of paragraph (a) files a return during the period disregarded under paragraph (a), interest must be paid on an overpayment or refundable credit from the due date of the return, notwithstanding section 289A.56, subdivision 2.

(d) The provisions of this subdivision apply to the spouse of an individual entitled to the benefits of this subdivision with respect to a joint return filed by the spouses.

[For text of subs 2 to 7, see M.S.2004]

History: 2005 c 151 art 6 s 6

289A.40 LIMITATIONS ON CLAIMS FOR REFUND.

Subdivision 1. Time limit; generally. Unless otherwise provided in this chapter, a claim for a refund of an overpayment of state tax must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time, or one year from the date of an order assessing tax under section 270C.33 or an order determining an appeal under section 270C.35, subdivision 8, or one year from the date of a return made by the commissioner under section 270C.33, subdivision 3, upon payment in full of the tax, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later. Claims for refund, except for taxes under chapter 297A, filed after the 3-1/2 year period but within the one-year period are limited to the amount of the tax, 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.

In the case of assessments under section 289A.38, subdivision 5 or 6, claims for refund under chapter 297A filed after the 3-1/2 year period but within the one-year period are limited to the amount of the tax, penalties, and interest on the order or return made by the commissioner that are due for the period before the 3-1/2 year period.

[For text of subd 1a, see M.S.2004]

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 for a claim relating to an overpayment of taxes under chapter 297A 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 subs 3 and 4, see M.S.2004]

Subd. 5. Purchaser filed refund claims. A claim for refund of taxes paid on a transaction not subject to tax under chapter 297A, where the purchaser may apply directly to the commissioner under section 289A.50, subdivision 2a, must be filed within 3-1/2 years from the 20th day of the month following the month of the invoice date for the purchase.

Subd. 6. Capital equipment refund claims. A claim for refund for taxes paid under chapter 297A on capital equipment must be filed within 3-1/2 years from the 20th day of the month following the month of the invoice date for the purchase of the capital equipment. A claim for refund for taxes imposed on capital equipment under section 297A.63 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 under section 289A.37, subdivision 1, upon payment in full of the tax, penalties, and interest shown on the order, whichever period expires later.

History: 2005 c 151 art 2 s 17; art 7 s 3-5

289A.42 CONSENT TO EXTEND STATUTE.

Subdivision 1. **Extension agreement.** If before the expiration of time prescribed in sections 270C.58, subdivision 13, 289A.38, and 289A.40 for the assessment of tax or the filing of a claim for refund, both the commissioner and the taxpayer have consented in writing to the assessment or filing of a claim for refund after that time, the tax may be assessed or the claim for refund filed at any time before the expiration of the agreed upon period. The period may be extended by later agreements in writing before the expiration of the period previously agreed upon. The taxpayer and the commissioner may also agree to extend the period for collection of the tax.

[For text of subd 2, see M.S.2004]

History: 2005 c 151 art 2 s 9

289A.43 [Repealed, 2005 c 151 art 1 s 117]**289A.50 CLAIMS FOR REFUNDS.**

Subdivision 1. **General right to refund.** (a) Subject to the requirements of this section and section 289A.40, a taxpayer who has paid a tax in excess of the taxes lawfully due and who files a written claim for refund will be refunded or credited the overpayment of the tax 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 was paid, the kind of tax paid, the amount of the tax that the taxpayer claims was erroneously paid, the grounds on which a refund is claimed, and other information relative to the payment and in the form required by the commissioner. An income tax, estate tax, or corporate franchise tax return, or amended return claiming an overpayment constitutes a claim for refund.

(c) 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, the commissioner shall refund or credit the overpayment to the taxpayer and no demand is necessary. If the overpayment exceeds \$1, the amount of the overpayment must be refunded to the taxpayer. If the amount of the overpayment is less than \$1, the commissioner is not required to refund. In these situations, the commissioner does not have to make written findings or serve notice by mail to the taxpayer.

(d) If the amount allowable as a credit for withholding, estimated taxes, or dependent care exceeds the tax against which the credit is allowable, the amount of the excess is considered an overpayment. The refund allowed by section 290.06, subdivision 23, is also considered an overpayment. The requirements of section 270C.33 do not apply to the refunding of such an overpayment shown on the original return filed by a taxpayer.

(e) If the entertainment tax withheld at the source exceeds by \$1 or more the taxes, penalties, and interest reported in the return of the entertainment entity or imposed by section 290.9201, the excess must be refunded to the entertainment entity. If the excess is less than \$1, the commissioner need not refund that amount.

(f) If the surety deposit required for a construction contract exceeds the liability of the out-of-state contractor, the commissioner shall refund the difference to the contractor.

(g) An action of the commissioner in refunding the amount of the overpayment does not constitute a determination of the correctness of the return of the taxpayer.

(h) There is appropriated from the general fund to the commissioner of revenue the amount necessary to pay refunds allowed under this section.

Subd. 1a. **Refund form.** On or before January 1, 2000, the commissioner of revenue shall prepare and make available to taxpayers a form for filing claims for refund of taxes paid in excess of the amount due. The commissioner may require corporate franchise taxpayers claiming a refund of corporate franchise taxes paid in excess of the amount lawfully due to include on the claim for refund or amended

return information necessary for payment of the taxes paid in excess of taxes lawfully due by electronic means.

[For text of subds 2 to 5, see M.S.2004]

Subd. 7. Remedies. (a) If the taxpayer is notified by the commissioner that the refund claim is denied in whole or in part, the taxpayer may:

(1) file an administrative appeal as provided in section 270C.35, or an appeal with the Tax Court, within 60 days after issuance of the commissioner's notice of denial; or

(2) file an action in the district court to recover the refund.

(b) An action in the district court on a denied claim for refund must be brought within 18 months of the date of the denial of the claim by the commissioner.

(c) No action in the district court or the Tax Court shall be brought within six months of the filing of the refund claim unless the commissioner denies the claim within that period.

(d) 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.

(e) The commissioner and the taxpayer may agree to extend the period for bringing an action in the district court.

(f) An action for refund of tax by the taxpayer must be brought in the district court of the district in which lies the county of the taxpayer's residence or principal place of business. In the case of an estate or trust, the action must be brought at the principal place of its administration. Any action may be brought in the district court for Ramsey County.

Subd. 8. Mistake discovered by commissioner. If money has been erroneously collected from a taxpayer or other person, the commissioner shall, within the period named in section 289A.40 for filing a claim for refund, and, subject to the provisions of chapter 270A, section 270C.64, and this section, grant a refund to that taxpayer or other person.

[For text of subds 9 and 10, see M.S.2004]

History: 2005 c 151 art 2 s 17; art 6 s 7

289A.55 INTEREST PAYABLE TO COMMISSIONER.

Subdivision 1. Interest rate. When interest is required under this section, interest is computed at the rate specified in section 270C.40.

[For text of subds 2 to 6, see M.S.2004]

Subd. 7. Installment payments; estate tax. Interest must be paid on unpaid installment payments of the tax authorized under section 289A.30, subdivision 2, beginning on the date the tax was due without regard to extensions allowed or extensions elected, at the rate given in section 270C.40.

Subd. 8. Interest on judgments. Notwithstanding section 549.09, if judgment is entered in favor of the commissioner with regard to any tax, the judgment bears interest at the rate given in section 270C.40 from the date the judgment is entered until the date of payment.

[For text of subd 9, see M.S.2004]

History: 2005 c 151 art 2 s 17

289A.56 INTEREST ON OVERPAYMENTS.

Subdivision 1. Interest rate. When interest is due on an overpayment under this section, it must be computed at the rate specified in section 270C.405.

[For text of subs 2 to 6, see M.S.2004]

Subd. 7. **Biotechnology and health sciences industry zone refunds.** Notwithstanding subdivision 3, for refunds payable under section 297A.68, subdivision 38, interest is computed from 90 days after the refund claim is filed with the commissioner.

History: 2005 c 151 art 2 s 17; 1Sp2005 c 3 art 7 s 7

289A.60 CIVIL PENALTIES.

[For text of subs 1 and 2, see M.S.2004]

Subd. 2a. **Penalties for extended delinquency.** (a) If an individual income tax is not paid within 180 days after the date of filing of a return or, in the case of taxes assessed by the commissioner, within 180 days after the assessment date or, if appealed, within 180 days after final resolution of the appeal, an extended delinquency penalty of five percent of the tax remaining unpaid is added to the amount due.

(b) If a tax return is not filed within 30 days after written demand for the filing of a delinquent return, an extended delinquency penalty of five percent of the tax not paid prior to the demand or \$100 is imposed, whichever amount is greater.

Subd. 4. **Substantial understatement of liability; penalty.** (a) The commissioner of revenue shall impose a penalty for substantial understatement of any tax payable to the commissioner, except a tax imposed under chapter 297A.

(b) There must be added to the tax an amount equal to 20 percent of the amount of any underpayment attributable to the understatement. There is a substantial understatement of tax for the period if the amount of the understatement for the period exceeds the greater of:

(1) ten percent of the tax required to be shown on the return for the period; or

(2)(i) \$10,000 in the case of a mining company or a corporation, other than an S corporation as defined in section 290.9725, when the tax is imposed by chapter 290 or section 298.01 or 298.015, or

(ii) \$5,000 in the case of any other taxpayer, and in the case of a mining company or a corporation any tax not imposed by chapter 290 or section 298.01 or 298.015.

(c) For a corporation, other than an S corporation, there is also a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(1) ten percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000); or

(2) \$10,000,000.

(d) The term "understatement" means the excess of the amount of the tax required to be shown on the return for the period, over the amount of the tax imposed that is shown on the return. The excess must be determined without regard to items to which subdivision 27 applies. The amount of the understatement shall be reduced by that part of the understatement that is attributable to the tax treatment of any item by the taxpayer if (1) there is or was substantial authority for the treatment, or (2)(i) any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return and (ii) there is a reasonable basis for the tax treatment of the item. The exception for substantial authority under clause (1) does not apply to positions listed by the Secretary of the Treasury under section 6662(d)(3) of the Internal Revenue Code. A corporation does not have a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if the treatment does not clearly reflect the income of the corporation within the meaning of section 6662(d)(2)(B) of the Internal Revenue Code. The special rules in cases involving tax shelters provided in section 6662(d)(2)(C) of the Internal Revenue Code shall apply and shall apply to a tax shelter the principal purpose of which is the avoidance or evasion of state taxes.

(e) The commissioner may abate all or any part of the addition to the tax provided by this section on a showing by the taxpayer that there was reasonable cause for the

understatement, or part of it, and that the taxpayer acted in good faith. The additional tax and penalty shall bear interest at the rate specified in section 270C.40 from the time the tax should have been paid until paid.

[For text of subd 5, see M.S.2004]

Subd. 5a. Penalty for repeated failures to file returns or pay taxes. If there is a pattern by a person of repeated failures to timely file withholding or sales or use tax returns or timely pay withholding or sales or use taxes, and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent of the amount of tax not timely paid as a result of each such subsequent failure is added to the tax. The penalty can be abated under the abatement authority in section 270C.34.

Subd. 6. Penalty for failure to file, false or fraudulent return, evasion. (a) If a person, with intent to evade or defeat a tax or payment of tax, fails to file a return, files a false or fraudulent return, or attempts in any other manner to evade or defeat a tax or payment of tax, there is imposed on the person a penalty equal to 50 percent of the tax, less amounts paid by the person on the basis of the false or fraudulent return, if any, due for the period to which the return related.

(b) If a person files a false or fraudulent return that includes a claim for refund, there is imposed on the person a penalty equal to 50 percent of the portion of any refund claimed that is attributable to fraud. The penalty under this paragraph is in addition to any penalty imposed under paragraph (a).

[For text of subds 7 to 10, see M.S.2004]

Subd. 11. Penalties relating to information reports, withholding. (a) When a person required under section 289A.09, subdivision 2, to give a statement to an employee or payee and a duplicate statement to the commissioner, or to give a reconciliation of the statements and quarterly returns to the commissioner, gives a false or fraudulent statement to an employee or payee or a false or fraudulent duplicate statement or reconciliation of statements and quarterly returns to the commissioner, or fails to give a statement or the reconciliation in the manner, when due, and showing the information required by section 289A.09, subdivision 2, or rules prescribed by the commissioner under that section, that person is liable for a penalty of \$50 for an act or failure to act. The total amount imposed on the delinquent person for failures during a calendar year must not exceed \$25,000.

(b) In addition to any other penalty provided by law, an employee who gives a withholding exemption certificate or a residency affidavit to an employer that decreases the amount withheld under section 290.92 and as of the time the certificate or affidavit was given to the employer there was no reasonable basis for the statements in the certificate or affidavit is liable to the commissioner of revenue for a penalty of \$500 for each instance.

(c) In addition to any other penalty provided by law, an employer who fails to submit a copy of a withholding exemption certificate or a residency affidavit required by section 290.92, subdivision 5a, clause (1)(a), (1)(b), or (2) is liable to the commissioner of revenue for a penalty of \$50 for each instance.

(d) An employer or payor who fails to file an application for a withholding account number, as required by section 290.92, subdivision 24, is liable to the commissioner for a penalty of \$100.

Subd. 12. Penalties relating to property tax refunds. (a) If it is determined that a property tax refund claim is excessive and was negligently prepared, ten percent of the corrected claim must be disallowed. If the claim has been paid, the amount disallowed must be recovered by assessment and collection.

(b) An owner who without reasonable cause fails to give a certificate of rent constituting property tax to a renter, as required by section 290A.19, paragraph (a), is liable to the commissioner for a penalty of \$100 for each failure.

(c) If the owner or managing agent knowingly gives rent certificates that report total rent constituting property taxes in excess of the amount of actual rent constituting

property taxes paid on the rented part of a property, the owner or managing agent is liable for a penalty equal to the greater of (1) \$100 or (2) 50 percent of the excess that is reported. An overstatement of rent constituting property taxes is presumed to be knowingly made if it exceeds by ten percent or more the actual rent constituting property taxes.

Subd. 13. Penalties for tax return preparers. (a) If an understatement of liability with respect to a return or claim for refund is due to a reckless disregard of laws and rules or willful attempt in any manner to understate the liability for a tax by a person who is a tax return preparer with respect to the return or claim, the person shall pay to the commissioner a penalty of \$500. If a part of a property tax refund claim is excessive due to a reckless disregard or willful attempt in any manner to overstate the claim for relief allowed under chapter 290A by a person who is a tax refund or return preparer, the person shall pay to the commissioner a penalty of \$500 with respect to the claim. These penalties may not be assessed against the employer of a tax return preparer unless the employer was actively involved in the reckless disregard or willful attempt to understate the liability for a tax or to overstate the claim for refund. These penalties are income tax liabilities and may be assessed at any time as provided in section 289A.38, subdivision 5.

(b) A civil action in the name of the state of Minnesota may be commenced to enjoin any person who is a tax return preparer doing business in this state as provided in section 270C.447.

(c) The commissioner may terminate or suspend a tax preparer's authority to transmit returns electronically to the state, if the commissioner determines that the tax preparer has engaged in a pattern and practice of conduct in violation of paragraph (a) of this subdivision or has been convicted under section 289A.63.

(d) For purposes of this subdivision, the term "understatement of liability" means an understatement of the net amount payable with respect to a tax imposed by state tax law, or an overstatement of the net amount creditable or refundable with respect to a tax. The determination of whether or not there is an understatement of liability must be made without regard to any administrative or judicial action involving the taxpayer. For purposes of this subdivision, the amount determined for underpayment of estimated tax under either section 289A.25 or 289A.26 is not considered an understatement of liability.

(e) For purposes of this subdivision, the term "overstatement of claim" means an overstatement of the net amount refundable with respect to a claim for property tax relief provided by chapter 290A. The determination of whether or not there is an overstatement of a claim must be made without regard to administrative or judicial action involving the claimant.

(f) For purposes of this section, the term "tax refund or return preparer" means an individual who prepares for compensation, or who employs one or more individuals to prepare for compensation, a return of tax, or a claim for refund of tax. The preparation of a substantial part of a return or claim for refund is treated as if it were the preparation of the entire return or claim for refund. An individual is not considered a tax return preparer merely because the individual:

(1) gives typing, reproducing, or other mechanical assistance;

(2) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the individual is regularly and continuously employed;

(3) prepares a return or claim for refund of any person as a fiduciary for that person; or

(4) prepares a claim for refund for a taxpayer in response to a tax order issued to the taxpayer.

[For text of subs 14 and 15, see M.S.2004]

Subd. 16. Penalty for sales after revocation. A person who engages in the business of making retail sales after revocation of a permit under section 270C.722 is liable for a penalty of \$100 for each day the person continues to make taxable sales.

[For text of subs 17 to 19, see M.S.2004]

Subd. 20. Penalty for promoting abusive tax shelters. (a) Any person who:

(1)(i) organizes or assists in the organization of a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, or (ii) participates in the sale of any interest in an entity or plan or arrangement referred to in clause (i); and

(2) makes or furnishes in connection with the organization or sale a statement with respect to the allowability of a deduction or credit, the excludability of income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent concerning any material matter, shall pay a penalty equal to the greater of \$1,000 or 20 percent of the gross income derived or to be derived by the person from the activity.

The penalty imposed by this subdivision is in addition to any other penalty provided by this section. The penalty must be collected in the same manner as any delinquent income tax. In a proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof is upon the commissioner.

(b) If an activity for which a penalty imposed under this subdivision involves a statement that a material advisor, as defined in section 289A.121, has reason to know is false or fraudulent as to any material matter, the amount of the penalty equals the greater of:

(1) the amount determined under paragraph (a); or

(2) 50 percent of the gross income derived or to be derived from the activity.

Subd. 20a. Aiding and abetting understating of tax liability. (a) A penalty in the amount specified under paragraph (b) for each document is imposed on each person who:

(1) aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document;

(2) knows or has reason to believe that the portion of a return, affidavit, claim, or other document will be used in connection with any material matter arising under the Minnesota individual income or corporate franchise tax; and

(3) knows that the portion, if so used, would result in an understatement of the liability for tax of another person.

(b)(1) Except as provided in clause (2), the amount of the penalty imposed by this subdivision is \$1,000.

(2) If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by paragraph (a) is \$10,000.

(3) If any person is subject to a penalty under paragraph (a) for any document relating to any taxpayer for any taxable period or taxable event, the person is not subject to a penalty under paragraph (a) for any other document relating to the taxpayer for the taxable period or event.

(c) For purposes of this subdivision, "procures" includes (1) ordering or otherwise causing any other person to do an act, and (2) knowing of, and not attempting to prevent, participation by any other person in an act.

(d) In a proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof is upon the commissioner. The penalty applies whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) For purposes of paragraph (a), clause (1), a person furnishing typing, reproducing, or other mechanical assistance with respect to a document is not treated as having aided or assisted in the preparation of the document by reason of the assistance.

(f)(1) Except as provided by clause (2), the penalty imposed by this section is in addition to any other penalty provided by law.

(2) No penalty applies under subdivision 20 to any person for any document for which a penalty is assessed on the person under this subdivision.

Subd. 21. Penalty for failure to make payment by electronic means. In addition to other applicable penalties imposed by this section, after notification from the commissioner to the taxpayer that payments are required to be made by electronic means under section 289A.20, subdivision 2, paragraph (e), or 4, paragraph (c), or 289A.26, subdivision 2a, and the payments are remitted by some other means, there is a penalty in the amount of five percent of each payment that should have been remitted 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 can be abated under the abatement procedures prescribed in section 270C.34, subdivision 2, if the failure to remit the payment electronically is due to reasonable cause.

[For text of subds 22 to 25, see M.S.2004]

Subd. 26. Tax shelter penalties; registration and listing. (a) For purposes of this subdivision, "material advisor" has the meaning given it under section 6111(b)(1) of the Internal Revenue Code.

(b) The penalties in this subdivision apply in connection with the use of tax shelters, as defined under section 289A.121, and the definitions under that section apply for the purposes of this subdivision.

(c) A material advisor who fails to register a tax shelter, including providing all of the required information under section 289A.121, on or before the date prescribed or who files false or incomplete information with respect to the transaction is subject to a penalty of \$50,000. If the tax shelter is a listed transaction, a penalty applies equal to the greater of:

(1) \$200,000;

(2) 50 percent of the gross income that the material advisor derived from that activity; or

(3) 75 percent of the gross income that the material advisor derived from that activity if the material advisor intentionally failed to act.

(d)(1) Any person who fails to include on a return or statement any information with respect to a reportable transaction as required under section 289A.121 is subject to a penalty equal to:

(i) \$10,000 in the case of an individual and \$50,000 in any other case; or

(ii) with respect to a listed transaction, \$100,000 in the case of an individual and \$200,000 in any other case.

(2) For a unitary business in which more than one member fails to include information on its return or statement for the same reportable transaction, the penalty under clause (1) for each additional member that fails to include the required information on its return or statement for the reportable transaction is limited to the following amount:

(i) \$500 for each member, subject to a maximum additional penalty of \$25,000; and

(ii) with respect to a listed transaction, \$1,000 for each member, subject to a maximum additional penalty of \$100,000.

(e) A material advisor required to maintain or provide a list under section 289A.121, subdivision 6, is subject to a penalty equal to \$10,000 for each day after the

20th day that the material advisor failed to make the list available to the commissioner after written request for that list was made. No penalty applies for a failure on any day if the failure is due to reasonable cause.

(f) The penalty imposed by this subdivision is in addition to any other penalty imposed under this section.

(g) Notwithstanding section 270C.34, the commissioner may abate all or any portion of any penalty imposed by paragraphs (c) and (d) for any violation, only if all of the following apply:

- (1) the violation is for a reportable transaction, other than a listed transaction; and
- (2) abating the penalty would promote compliance with the requirements of chapter 290.

(h) Notwithstanding any other law or rule, a determination under paragraph (g) may not be reviewed in any judicial proceeding.

Subd. 27. **Reportable transaction understatement.** (a) If a taxpayer has a reportable transaction understatement for any taxable year, an amount equal to 20 percent of the amount of the reportable transaction understatement must be added to the tax.

(b)(1) For purposes of this subdivision, "reportable transaction understatement" means the product of:

- (i) the amount of the increase, if any, in taxable income that results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of that item as shown on the taxpayer's tax return; and
- (ii) the highest rate of tax imposed on the taxpayer under section 290.06 determined without regard to the understatement.

(2) For purposes of clause (1)(i), any reduction of the excess of deductions allowed for the taxable year over gross income for that year, and any reduction in the amount of capital losses which would, without regard to section 1211 of the Internal Revenue Code, be allowed for that year, must be treated as an increase in taxable income.

(c) This subdivision applies to any item that is attributable to:

- (1) any listed transaction under section 289A.121; and
- (2) any reportable transaction, other than a listed transaction; if a significant purpose of that transaction is the avoidance or evasion of federal income tax liability.

(d) Paragraph (a) applies by substituting "30 percent" for "20 percent" with respect to the portion of any reportable transaction understatement with respect to which the disclosure requirements of section 289A.121, subdivision 5, and section 6664(d)(2)(A) of the Internal Revenue Code are not met.

(e)(1) No penalty applies under this subdivision with respect to any portion of a reportable transaction understatement if the taxpayer shows that there was reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion. This paragraph applies only if:

- (i) the relevant facts affecting the tax treatment of the item are adequately disclosed as required under section 289A.121;
- (ii) there is or was substantial authority for the treatment; and
- (iii) the taxpayer reasonably believed that the treatment was more likely than not the proper treatment.

(2) A taxpayer who did not adequately disclose under section 289A.121 meets the requirements of clause (1)(i), if the commissioner abates the penalty under section 270C.34.

(3) For purposes of clause (1)(iii), a taxpayer is treated as having a reasonable belief with respect to the tax treatment of an item only if the belief:

- (i) is based on the facts and law that exist when the return of tax which includes the tax treatment is filed; and
- (ii) relates solely to the taxpayer's chances of success on the merits of the treatment and does not take into account the possibility that a return will not be

audited, the treatment will not be raised on audit, or the treatment will be resolved through settlement if it is raised.

(4) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if:

(i) the tax advisor:

(A) is a material advisor, as defined in section 289A.121, and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1) of the Internal Revenue Code) to any person who so participates;

(B) is compensated directly or indirectly by a material advisor with respect to the transaction;

(C) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained; or

(D) has a disqualifying financial interest with respect to the transaction, as determined under United States Treasury regulations prescribed to implement the provisions of section 6664(d)(3)(B)(ii)(IV) of the Internal Revenue Code; or

(ii) the opinion:

(A) is based on unreasonable factual or legal assumptions, including assumptions as to future events;

(B) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person;

(C) does not identify and consider all relevant facts; or

(D) fails to meet any other requirement as the Secretary of the Treasury may prescribe under federal law.

(f) The penalty imposed by this subdivision applies in lieu of the penalty imposed under subdivision 4.

History: 2005 c 151 art 2 s 10,17; art 6 s 8-10; art 9 s 17-19; 1Sp2005 c 3 art 8 s 4-8; art 11 s 5

289A.63 CRIMINAL PENALTIES.

[For text of subs 1 and 2, see M.S.2004]

Subd. 3. **Sales without permit; violations.** (a) A person who engages in the business of making retail sales in Minnesota without the permit required under chapter 297A, or a responsible officer of a corporation who so engages in business, is guilty of a gross misdemeanor.

(b) A person who engages in the business of making retail sales in Minnesota after revocation of a permit under section 270C.722, when the commissioner has not issued a new permit, is guilty of a felony.

[For text of subs 4 to 11, see M.S.2004]

History: 2005 c 151 art 2 s 17

289A.65 [Repealed, 2005 c 151 art 1 s 117]