

2010 SPECIAL TAXES LEGISLATIVE BULLETIN

(2010 Regular and First Special Session)

MINNESOTA • REVENUE

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Bulletin Date: June 7, 2010

Unless otherwise noted, the provisions discussed in this bulletin can be found in 2010 Minn. Laws, Chapter 389.

SPECIAL TAXES

Cigarettes and Tobacco

Tobacco products. Minn. Stat. § 297F.01, subd. 19, which contains a definition of tobacco products, was amended by expanding the definition to include any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means and excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose. Effective August 1, 2010. 2010 Minn. Laws, Chapter 305, Section 2.

Weighted average retail price. Minn. Stat. § 297F.01, subd. 22a, was amended to clarify the definition of weighted average retail price by moving all survey related specifications to the tax imposition section of section 297F.25. Effective January 1, 2011.

Cigarette and tobacco products tax license cancellation or nonrenewal. Minn. Stat. § 297F.04 was amended by adding a new subdivision 2a, to provide authority for cancellation or non-renewal of a distributor's license if no activity for 1 year. Effective May 28, 2010.

Sales to nonqualified buyers. Minn. Stat. § 297F.07, subd. 4, was amended to delete an obsolete reference to selling contraband cigarettes. Effective May 28, 2010.

Cigarette sales tax survey. Minn. Stat. § 297F.25, subd. 1, was amended to change the annual price survey publication date from May 1 to November 1 with the new rate effective January 1 rather than August 1 and provides transition language for establishing a tax rate for sales from August 1, 2011 through December 31, 2011. Effective January 1, 2011.

Insurance

Fees and commissions. Minn. Stat. § 60A.204 is amended to clarify that surplus lines licensees may charge fees and commissions, in addition to the premium, that are not excessive or discriminatory. Effective August 1, 2010. 2010 Minn. Laws, Chapter 384, Section 6.

Obtaining coverage from an ineligible surplus lines insurer. Minn. Stat. § 60A.209, subd. 1, was amended to provide a cross-reference to Minn. Stat. ch. 297I, to clarify that upon obtaining coverage from an ineligible surplus lines insurer, a surplus lines licensee shall collect from the insured, premium taxes, as provided under ch. 297I, and report the transaction to the commissioner of revenue. Effective May 28, 2010.

Gross premiums definition. Minn. Stat. § 297I.01, subd. 9, was amended to clarify that for purposes of the surplus lines tax, gross premiums include all related fees, commissions and charges received by the licensee. Gross premiums do not include the stamping fee and the operating assessment. Effective May 28, 2010.

Imposition of surplus lines tax. Minn. Stat. § 297I.05, subd. 7, was amended to clarify that the tax is imposed on all gross premiums. This provision also deletes the exclusion of operating assessments. The exclusion has been added to the definition of gross premiums, as provided in Minn. Stat. § 297I.01, subd. 9. Effective May 28, 2010.

Credit for historic structure rehabilitation. Minn. Stat. § 297I.20 was amended by adding a new subdivision 3, to allow a credit against the premium tax. Minn. Stat. § 290.0681 was created to allow a refundable credit, or grant-in-lieu of credit, for historic structure rehabilitation projects. An insurance company is allowed to claim a credit equal to the amount of the credit certificate issued to it, or to a person who has assigned the credit to the insurance company, against the insurance premiums tax imposed under Minn. Stat. ch. 297I.

If the amount of the credit exceeds the insurance company's liability for tax, the excess shall be refunded to the insurance company. The credit does not apply to the calculation of police and fire aid under Minn. Stat. § 69.021. The commissioner shall prescribe the manner in which the credit may be claimed.

Effective for taxable years beginning after December 31, 2009, for certified historic structures for which qualified costs of rehabilitation are first paid under construction contracts entered into after May 1, 2010. 2010 Minn. Laws, Chapter 216, Section 17.

Return due dates. Minn. Stat. § 297I.30, subd. 1, was amended to delete obsolete references to Minn. Stat. § 297I.05, and added a specific due date for filing returns for certain taxes. Provisions within § 297I.05 were renumbered due to previous law changes (2008 Minn. Laws, ch. 366, art. 14, sec. 8, and 2002 Minn. Laws, ch. 379, art. 1, sec. 70). This amendment added references to § 297I.05, subds. 9 and 10, and subd. 12, paragraph (c), thereby providing a specific due date for filing returns for the taxes which had been given unspecified due dates under § 297I.30, subds. 4 [tax on those licensed to procure insurance from unlicensed foreign companies], and 5 [tax on procuring insurance from an ineligible company], and 6 [joint self insurance plans]. Minn. Stat. § 297I.30, subds. 4, 5, and 6, were repealed. The amendment also added references to § 297I.05, subds. 12, paragraph (d), and 14, to give a due date for filing returns for accountable provider networks and life insurance companies, as these provisions are not currently included in § 297I.30. Effective May 28, 2010.

Return due dates for surplus lines taxes. Minn. Stat. § 297I.30, subd. 2, was amended to update obsolete references to Minn. Stat. § 297I.05. This amendment also clarified the provision dealing with forms prescribed by the commissioner to be consistent with similar provisions dealing with other taxes. Effective May 28, 2010.

Surcharges. Minn. Stat. § 297I.30, subds. 7 and 8, were amended to clarify provisions dealing with forms prescribed by the commissioner to be consistent with similar provisions dealing with other taxes. Deleted subd. 7, clause (b) which referred to Minn. Stat. § 297I.10, subd. 2. Subdivision 2 has been repealed. Effective May 28, 2010.

Electronic payment of insurance tax. Minn. Stat. § 297I.35, subd. 2, relating to the electronic payment of insurance tax, was amended to clarify that the threshold period is a fiscal year ending June 30. Effective for payments due in calendar year 2010 and thereafter, based upon liabilities incurred in the fiscal year ending June 30, 2009, and in fiscal years thereafter.

Estimated taxes and definition of tax. Minn. Stat. § 297I.40, subds. 1 and 5, were amended to correct an obsolete reference to Minn. Stat. § 297I.05. The amendment also adds a reference to § 297I.05, subd. 14, which deals with life insurance companies. Effective May 28, 2010.

Omission in excess of 25 percent. Minn. Stat. § 297I.65, is amended by adding a subdivision to provide that if a taxpayer omits more than 25% of gross premiums tax, additional tax may be assessed within 6-1/2 years from the due date of the return. This language is similar to the provision in Minn. Stat. § 289A.38, subd. 6. Effective for premium taxes due after December 31, 2010.

Repealer. Minn. Stat. § 297I.30, subds. 4, 5, and 6, were repealed because their due date provisions are replaced in section 11 above. Effective May 28, 2010.

Lawful Gambling

Annual Audit. Minn. Stat. § 297E.06, subd. 4, was amended to provide that audits must be performed by an independent accountant licensed in accordance with Minn. Stat. ch. 326A which contains the Minnesota Board of Accountancy provisions. Effective August 1, 2010. 2010 Minn. Laws, Chapter 191, Section 5.

Rules Dealing with Lawful Gambling Annual Audits. The revisor of statutes is directed (1) to remove all references to licensed public accountants or LPA's in rule chapter 8122; (2) to delete in Minn. Rules part 8122.0150, subpart 4, the reference to "by the Minnesota Board of Accountancy" and insert "in accordance with Minnesota Statutes, chapter 326A;" and (3) in Minn. Rules part 8122.0200, subpart 1, to delete "or independent licensed public account in good standing with the Minnesota State Board of Accountancy and licensed to practice in Minnesota." Effective August 1, 2010. 2010 Minn. Laws, Chapter 191, Section 13.

Repealer. Minn. Rules parts 8122.0150, subpart 7, which contained a definition of "licensed public accountant," and 8122.0600, which is obsolete and deals with reviews of organizations conducting lawful gambling, were repealed. Effective August 1, 2010. 2010 Minn. Laws, Chapter 191, Section 14.

MinnesotaCare

Underpayment of estimated tax. Minn. Stat. § 295.55, subds. 2 and 3, was amended making the underpayment provision for MinnesotaCare taxes similar to the provision in Minn. Stat. § 297I.40, subds. 2 and 3. Under this change, a taxpayer who starts a new business, can still meet the estimated payment requirements by paying tax based on the prior year receipts, even if the taxpayer was not doing business the entire year. The change creates a safe harbor for taxpayers whose tax liability is \$500 or less in the current or previous year. Effective for gross revenues received after December 31, 2010.

Minerals

Distribution of production tax proceeds. Minn. Stat. § 298.282, subd. 1, was amended to correct a reference to “tax relief area.” The correct term is “taconite assistance area.” Effective for distributions made after May 28, 2010.

Property tax relief funds, special distribution. A new subdivision 7 is added to Minn. Stat. § 298.2961 to provide for distributions for a special fund established to receive 28.757 cents per ton of the taconite production tax that would otherwise have been allocated to the property tax relief fund. Effective for the 2010 distributions of taconite production tax. The special distributions enumerated in the session law are required to be made with the August 2010 distributions of production tax proceeds. 2010 Minn. Laws, Chapter 215, Article 9, Section 3 and Chapter 216, Section 58 as amended by 2010 Minn. Laws, Chapter 389, Article 7, Sections 20 and 24.

Mortgage Registry Tax

Instruments as valid security for debt. Minn. Stat. § 287.03, which imposes conditions on the enforcement of mortgages and other instruments as security for a debt, was amended to more clearly allow for the fact that a mortgage may be used to enforce either the entire amount of a defined debt amount or a portion of it. This complements an existing mortgage registry tax provision that allows the tax to be computed on a portion of a debt amount if enforcement of the mortgage is limited to that amount. Effective July 1, 2010, for all mortgages except those for which a notice of lis pendens has been recorded before that date. 2010 Minn. Laws, Chapter 211.

Petroleum

Petroleum tax license cancellation or nonrenewal. Created Minn. Stat. § 296A.061 to provide authority for cancellation or non-renewal of a petroleum distributor’s license if there has been no activity for 1 year. Effective May 28, 2010.