Department Disclosure/Penalty Bill

	Yes	No
Separate Official Fiscal Note Requested	X	
Fiscal Impact		
DOR Administrative Costs/Savings	X	

April 6, 2001

Department of Revenue
Analysis of S.F. 1374 (Betzold)/ H.F. 1874 (Abrams) **1st Engrossment of Senate Bill**

	Revenue Gain or (Loss)			
	F.Y. 2002	**F.Y. 2003**	**F.Y. 2004**	**FY2005**
	(000's)			
Changes in Penalty Provisions:				
Individual Income Tax	$0	($5,100)	($5,400)	($5,800)
Corporate Franchise Tax	$0	($1,000)	($1,000)	($1,000)
Direct Appropriation for Administration	($545)	($25)	$0	$0
General Fund Total	($545)	($6,125)	($6,400)	($6,800)

Various effective dates.

EXPLANATION OF THE BILL

A section-by-section summary is attached.

REVENUE ANALYSIS DETAIL

- The only provisions with revenue impact are the penalty changes in Article 3.
- The estimates are based on Department of Revenue data on penalties for 1998 individual income tax and corporate franchise tax returns.
- The penalties assessed in each category (during processing, accounts receivable, etc.) were used to calculate what the penalties would be under the proposal.
- It was assumed that 1998 was a typical year and representative of subsequent years.
- The changes would be effective beginning with tax year 2001 returns filed in 2002. Therefore, the impact would first be reflected in fiscal year 2003 collections.

Number of Taxpayers: In 1998, penalties were assessed on 113,600 individual income tax returns and 9,400 corporate franchise tax returns.

ADMINISTRATIVE/OPERATIONAL IMPACT

Fiscal note was not formally requested, but one was completed and included with the Governor's recommendation. The penalty provision changes in this bill are expected to cost approximately $570,400 in the next biennium, mostly for systems changes.

Source: Minnesota Department of Revenue
Tax Research Division
http://www.taxes.state.mn.us/polic.html#analyses

2001 PENALTY/DISCLOSURE BILL SUMMARY

MINNESOTA Department of Revenue

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HF 1874 (Abrams) // SF 1374 (Betzold) // (FIRST ENGROSSMENT)

Article 1 Disclosure

Section 1. Classification of Revenue Recapture Data. Amends Minn. Stat. § 270A.11 to classify data collected by the Department of Revenue from claimant agencies relating to claims filed under the revenue recapture act as private data on individuals. Effective the day following final enactment.

Section 2. Data Collected Prior to Criminal Investigation. Amends Minn. Stat. § 270B.02, subd. 2, to classify data gathered prior to a criminal investigation, where such data is used to determine whether an investigation should be made, as protected nonpublic data. This amendment gives information analyzed by the criminal investigation division to determine which potential criminal tax violations should be pursued, and yet is not related to any specific taxpayers, the same protected nonpublic data classification that the Department's tax audit selection criteria currently has. Effective the day following final enactment.

Section 3. Informant Data. Amends Minn. Stat. § 270B.02, subd. 3 to eliminate the requirement that data received by the Department of Revenue from informants has to be "unsolicited" in order to be classified as confidential data. This will allow the department to offer broader confidentiality protection for informants. Effective the day following final enactment.

Section 4. Data Collected During a Criminal Investigation. Amends Minn. Stat. § 270B.03, subd. 6, to classify data gathered during a criminal investigation that is now closed as private or nonpublic data. This amendment makes closed criminal investigations accessible only to the data subject and not to the public, regardless of the type of tax involved in the investigation. Under current law, closed investigations involving a tax type classified as public (such as cigarette and liquor taxes) are open to the public, but if the tax type happens to be classified as private (such as individual income tax), the closed criminal file is only accessible to the taxpayer. Effective the day following final enactment.

Section 5. Search Warrants for Tax Return Information. Adds a new subdivision 2 to Minn. Stat. § 626.11, the search warrant statute. Since a search warrant is an actual court order signed by a judge, the Department of Revenue must turn over state tax return information specified in the warrant. However, a search warrant cannot compel the Department to turn over tax return information obtained from the Internal Revenue Service without the consent of the IRS, which will not give its consent unless its own procedures are followed. This proposal applies to IRS tax information being sought from the Department in a nontax criminal investigation and requires the judge to determine, in an order separate from the search warrant, that certain specific criteria have been met by the law enforcement authority seeking the warrant.

These criteria are the same as those used when tax return information is being sought directly from the Internal Revenue Service in a nontax federal criminal investigation, as set forth in § 6103(i)(1)(B)(i)-(iii) of the Internal Revenue Code. Effective the day following final enactment.

Article 2 Seizures of Contraband

Sections 1 to 5, and 7 to 11. Uniform Procedure for Seizures of Contraband. Amendments to Minn. Stat. §§ 296A.24, subds. 1 and 2; 297A.15, subd. 4; 297E.16, subds. 1 and 2; 297F.21, subds. 2 and 3; 297G.20, subds. 3 and 4; and repealing §§ 296A.24, subd. 3; 297E.16, subd. 3; 297F.21, subd. 4; and 297G.20, subd. 5. Standardize and streamline the seizure of contraband provisions for sales, petroleum, gambling, cigarette and tobacco, and liquor taxes. Make all the time limits consistent for service of a copy of the inventory of seized property and explanation of appeal rights, and for demanding a judicial determination of forfeiture. Make all the provisions consistent so that anybody having an interest in the property, if known, has to be served with an inventory. Specify that the inventory must be served by certified mail.

Eliminate the requirement that the Attorney General has to bring the forfeiture action. Instead, provide that the property is automatically forfeited to the state unless the person who had the property, or anybody claiming an interest in it, commences an action with the court within 60 days after service of the inventory, for a decision on whether forfeiture should take place. The court would then have the same jurisdiction to decide the issue of forfeiture that it has now under current law. If the value of the seized property is $7,500 or less, the action can be brought in conciliation court. The court filing fee can be waived if the petitioner cannot afford to pay it. The procedure is similar to the contraband forfeiture procedure in Minn. Stat. § 609.5314, subd. 6 for controlled substance violations.

Eliminate duplicate and cumbersome contraband forfeiture procedures from the statutes -- such as, having one procedure for the forfeiture of a contraband vehicle, and another one for the contraband property in the vehicle; or having one forfeiture procedure for contraband where no criminal charges are being brought, and another one for contraband where there is a criminal proceeding taking place.

Effective for seizures made on or after July 1, 2001.

Section 6. Definition of Contraband. Amends Minn. Stat. § 297F.21, subd. 1 that sets forth the definition of contraband to include vehicles used for the storage or transportation of untaxed tobacco products intended for sale in Minnesota other than those in the possession of a licensed distributor. Existing law allows seizure in limited circumstances of vehicles used for transportation of untaxed cigarettes. Effective for seizures made on or after July 1, 2001.

Article 3 Civil Penalty Reform

Section 1. Late Payment Penalties. Amends Minn. Stat. § 289A.60, subd. 1. Changes the late payment penalty for corporate franchise, fiduciary income, mining company, estate, partnership, S corporation and nonresident entertainer taxes that are not paid by the original due date from a graduated penalty to a one-time 6% penalty. (In the case of corporate franchise and mining company taxes, the penalty is not imposed if the taxpayer pays 90% of the tax by the due date, and the remaining tax is paid within 7 months thereafter.) For taxes reported on a return filed after the due date and not paid with the return, there is another one-time 5% penalty on the unpaid amount. For additional taxes assessed on a tax order and not paid within 60 days after the order, or within 60 after final resolution of an appeal of the order, there is a one-time 5% penalty on the unpaid amount.

Changes the late payment penalty for individual income tax that is not paid by the due date from a graduated penalty to a one-time 4% penalty. (The penalty is not imposed if the taxpayer pays 90% of the tax by the due date, and the remaining tax is paid within 6 months thereafter.) For additional taxes assessed on a tax order and not paid within 60 days after the order, or within 60 after final resolution of an appeal of the order, there is a one-time 4% penalty on the unpaid amount.

Effective for tax years beginning after December 31, 2000, and for estate tax returns due after January 1, 2002.

Section 2. Late Filing Penalties. Amends Minn. Stat. § 289A.60, subd. 2. Changes the late filing penalty for corporate franchise, fiduciary income, mining company, estate, partnership, S corporation and nonresident entertainer tax returns that are not filed timely (which in the case of corporations and mining companies is later than 7 months after the original due date) from a graduated penalty to a one-time penalty of 5% of the unpaid tax.

Changes the late filing penalty for individual income tax for returns that are not filed within 6 months after the original due date from a one-time penalty of 10% of the unpaid tax to 5%.

Effective for tax years beginning after December 31, 2000, and for estate tax returns due after January 1, 2002.

Section 3. Late Payment and Late Filing Extended Delinquency Penalties. Adds a new subdivision 2a to Minn. Stat. § 289A.60. If an individual income tax is not paid within 180 days after the tax return is filed, or in the case of taxes assessed by the commissioner, within 180 days after the assessment date or 180 days after final resolution of an appeal of the assessment, a one-time extended delinquency penalty of 5% of the unpaid tax is added to the tax.

If a delinquent corporate franchise, fiduciary income, mining company, estate, partnership, S corporation, or nonresident entertainer tax return is not filed within 30 days after written demand for the return, an extended delinquency penalty of 5% of the unpaid tax is added to the tax, or in the case of an individual income tax return, a minimum $100 penalty or the 5% penalty, whichever is greater, is imposed.

Effective for tax years beginning after December 31, 2000, and for estate tax returns due after January 1, 2002.

Section 4. Repeal of Combined Penalty. Repeals Minn. Stat. § 289A.60, subd. 3. The combined penalty, which no longer has any applicability as a result of sections 1 and 2 of this article, is repealed. Effective for tax years beginning after December 31, 2000, and for estate tax returns due after January 1, 2002.

Article 4 Criminal Penalties

Section 1. False or Fraudulent Invoices; Penalties. Amends Minn. Stat. § 297F.20, subd. 3 which deals with criminal sanctions for violations of the cigarette and tobacco products taxes to provide that anyone who maintains or provides invoices, known by the person to be fraudulent or false concerning a material matter, to be guilty of a felony. Also makes it a felony to knowingly aid or assist in the preparation or presentation of an invoice that is fraudulent or false concerning a material matter. Under current law it is a felony to file false or fraudulent returns or aid in their preparation. This simply adds that maintaining or providing false or fraudulent invoices or aiding in their preparation is subject to the same sanction. Effective for crimes occurring on or after July 1, 2001.

Article 5 Miscellaneous

Section 1. Student Loan Collections. Amends Minn. Stat. § 16D.08, subd. 2 to authorize the use of certain tax collection remedies to collect student loans without first obtaining a judgment. Current law provides that prior to using the tax collection remedies listed in section 16D.08, the commissioner must obtain a judgment in collection of debts except where the debt is for state taxes or child support. The amendment provides that a student loan debtor can request that the commissioner obtain a judgment prior to use of the collection remedies. If no request is made, the commissioner may proceed to use the tax collection remedies without obtaining a judgment. Effective for student loan debts referred to the department for collection on or after July 1, 2001.

Section 2. Interest on Penalties. Amends Minn. Stat. § 289A.55, subd. 9, to delete the reference to the statutory subdivision being repealed by article 3, section 4, and to add a reference to the new statutory subdivision being created by article 3, section 3. Effective for tax years beginning after December 31, 2000, and for estate tax returns due after January 1, 2002.

Section 3. Frivolous Return Penalty. *Under current law, the frivolous return penalty in Minn. Stat. § 289A.60, subd. 7 only applies to individual income tax. The amendment clarifies that the penalty applies to amended returns and claims for refund. It also expands the applicability of the penalty to all taxes covered by chapter 289A. Effective for returns or claims for refund filed on or after the day following final enactment.*