

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Adopted Exempt Permanent Rules Relating to Commissioner Filed Tax Returns

**AGENCY:** Department of Revenue

**REVISOR ID:** R-4682

**MINNESOTA RULES:** Chapter 8160

The attached rules are approved as to form

A handwritten signature in black ink, appearing to read "Evan A. Powell", written over a horizontal line.

Evan A. Powell  
Senior Assistant Revisor

1.1 **Department of Revenue**

1.2 **Adopted Exempt Permanent Rules Relating to Commissioner Filed Tax Returns**

1.3 **8160.0620 RETURNS MADE BY COMMISSIONER.**

1.4 Subpart 1. **Making returns.** If a taxpayer fails to file a required return, the  
1.5 commissioner may make a return for the taxpayer under Minnesota Statutes, section 270C.33,  
1.6 subdivision 3. For the purposes of this part, the terms in items A and B have the meanings  
1.7 given.

1.8 A. A "commissioner filed return" means a return made by the commissioner under  
1.9 Minnesota Statutes, section 270C.33, subdivision 3.

1.10 B. The "filing date" of a commissioner filed return means the date the  
1.11 commissioner ~~filed return is signed by the commissioner~~ makes and files the return for the  
1.12 taxpayer under Minnesota Statutes, sections 270C.33, subdivision 3, and 270C.62.

1.13 *[For text of subparts 2 to 5, see Minnesota Rules]*

1.14 Subp. 6. **Interest and penalties.** ~~During the period in which the taxpayer may appeal~~  
1.15 ~~a commissioner filed return to tax court and while an appeal is pending,~~ Interest under  
1.16 Minnesota Statutes, section 289A.55, subdivision 2, and penalties under Minnesota Statutes,  
1.17 section 289A.60, subdivisions, 1, 2, and 3, continue to accrue during the period in which  
1.18 the taxpayer may appeal a commissioner filed return to tax court and while an appeal is  
1.19 pending.

1.20 *[For text of subpart 7, see Minnesota Rules]*

## **FINDINGS & STATEMENT OF SUPPORTING REASONS**

Amending Minnesota Rules, parts 8160.0620, subpart 1(B) and subpart 6.

### **FINDINGS**

Under Minnesota Rules part 8160.0620, a Commissioner Filed Return (CFR) is filed at the time the Commissioner signs the return. However, the Minnesota Supreme Court in a 2016 ruling held that the rule is inconsistent with state statutes governing CFRs, and that the statutes control. *Berglund v Commissioner of Revenue*, 877 N.W.2d 780 (Minn. 2016).

Specifically, the court held that Minn. Stat. §§ 270C.33 and 270C.62 govern CFRs, and neither statute requires the commissioner's signature for the CFR to be filed. In its opinion, the court stated, "that the date of a commissioner-filed return does not depend on or require the Commissioner's signature." *Id.* at 784. Instead, the taxes are assessed when the CFR is made, and the CFR is made when it exists in writing and is entered into the commissioner's records. *Id.* at 784.

The current rule needs to be amended to bring it into accordance with the court's ruling and the plain language of the statutes. Specifically, subpart 1(B), needs to be amended to remove the signature requirement for CFRs. Additionally, subpart 6, is being amended to make the language easier to understand. Nothing substantive in subpart 6 is being changed.

### **STATEMENT OF SUPPORTING REASONS**

An amendment must meet one of the criteria of *Minnesota Statutes*, section 14.388, to be adopted under good cause exemption procedures. The third clause, "to incorporate specific changes set forth in applicable statutes when no interpretation of law is required," applies in this instance. The fourth clause – "make[s] changes that do not alter the sense, meaning, or effect of a rule" – also applies.