

MINNESOTA • REVENUE

June 14, 2010

Legislative Reference Library  
645 State Office Building  
100 Reverend Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

Re: In The Matter of The Proposed Amendment of Rules Governing Practice of Attorneys, Accountants, Agents, and Preparers before Department of Revenue; *Minnesota Rules*, part 8052.0300

Dear Librarian:

The Minnesota Department of Revenue intends to adopt rules governing the practice of attorneys, accountants, agents, and preparers before the Department of Revenue. We published a Dual Notice of Intent to Adopt Rules in the June 14, 2010, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time it is available to the public.

If you have any questions, please contact me at (651) 556-4062.

Yours very truly,



Susan E. Barry  
Attorney/ Rules Coordinator  
Appeals & Legal Services Division  
Minnesota Department of Revenue

Enclosure: Statement of Need and Reasonableness

## Department of Revenue

### STATEMENT OF NEED AND REASONABLENESS

#### Proposed Amendment to Rules Governing Practice of Attorneys, Accountants, Agents, and Preparers before Department of Revenue; Minnesota Rules, part 8052.0300

#### INTRODUCTION

The proposed amendment to the rules governing practice of attorneys, accountants, agents, and preparers before the Department of Revenue expands the scope of the rules from only certain tax types to all tax types administered by the Commissioner of Revenue; clarifies which types of power of attorney forms are acceptable; and clarifies when powers of attorney are needed for disclosure of information purposes.

The process that was used to draft the amendment to the rules was internal consultation within the Department of Revenue. Advisory committees were not used, and there were no public hearings. The Request for Comments was published in the *State Register* on Monday, October 13, 2008 (33 S.R. 673). Four comments were received.

#### ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact, Richard Walzer, Attorney, at Minnesota Department of Revenue, Appeals and Legal Services Division, 600 North Robert Street, St. Paul, Minnesota 55146-2220; by phone at (651) 556-4093; by fax at (651) 296-8229; or by e-mail at [rick.walzer@state.mn.us](mailto:rick.walzer@state.mn.us). TDD users may call the Department of Revenue at (651) 297-2196.

#### STATUTORY AUTHORITY

The Department's statutory authority to adopt these rules is set forth in *Minnesota Statutes*, section 270C.44, which provides that the Commissioner shall prescribe rules governing the qualification and practice of agents, attorneys, or other persons representing taxpayers before the Commissioner; and section 270C.06, which gives the Commissioner general rulemaking authority.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed amendment to rules.

#### REGULATORY ANALYSIS

As required by *Minnesota Statutes*, section 14.127, the Department looked at the cost of compliance within the first year after the rule changes take effect and determined that the cost will not exceed \$25,000 for any business that has less than 50 full time employees or for any one statutory or home rule charter city that has less than 10 full time employees.

As required by *Minnesota Statutes*, section 14.128, the Department looked at whether a local government will be required to adopt or amend an ordinance or other regulation to comply with the rule changes, and determined that local government is not impacted. The rule is expanded from applying only to income tax and property tax refund laws to all state tax laws administered by the commissioner. However, local property taxes are not included in these rule changes. The rule would not require any local government to adopt or amend an ordinance or regulation to comply with the rule changes.

*Minnesota Statutes*, section 14.131, sets out the following seven factors for a regulatory analysis that must be included in the SONAR:

**“(1) a description of the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

The classes of affected persons are tax practitioners who represent taxpayers before the Department of Revenue. The proposed rule does not impose costs, and therefore there are no classes of person who will bear any costs. Those who will benefit from the proposed rule are taxpayers or practitioners who will now have a better understanding about the scope of practice and rules of eligibility.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

There are no anticipated costs to the Department of Revenue or to any other agency of the implementation and enforcement of the proposed rule, and there is no effect on state revenues.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

There are no less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The Department of Revenue considered using the exempt rulemaking process, but decided instead to amend the rule using the normal rulemaking process. This is due to the fact that expanding the rule to include all tax types could be viewed as a substantive change.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

There are no probable costs to parties affected by this rule.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

There are no probable costs or consequences of not adopting the rule, other than taxpayers not being provided with the uniformity and clarity in tax administration that the rule would bring.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

The federal regulations dealing with this subject matter are contained in Treasury Department Circular No. 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers before the Internal Revenue Service* (Rev. 4/08). The proposed rule is very similar in concept to the federal regulations, and what differences there are have no effect on the parties affected by the proposed rule. That is because the federal regulations deal only with representing taxpayers before the Internal Revenue Service, not with representing taxpayers before a state taxing authority

## CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by *Minnesota Statutes*, section 14.131, the Department has consulted with the Commissioner of the Minnesota Management & Budget Department “to help evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government.”

## PERFORMANCE-BASED RULES

The proposed rule is designed to correct a technical issue that exists by updating the applicability of the rule to all tax types; clarifying which types of power of attorney forms are acceptable; and clarifying when powers of attorney are needed for disclosure of information purposes. To that extent, the Department’s goal of adopting rules that both enhance tax compliance and are practical in the private business sector is achieved.

## ADDITIONAL NOTICE

To provide notice to all persons who may be affected by the proposed rule, the Additional Notice Plan consists of:

- (1) posting the Request for Comments, Notice of Intent to Adopt Rules, and SONAR on the Department’s website at <http://www.taxes.state.mn.us>;
- (2) mailing a copy of the Request for Comments to the regular rulemaking list, and to chairs and minority leads of the House and Senate tax committees; and
- (3) mailing a copy of the Notice of Intent to Adopt Rules, and a copy of the proposed rules and SONAR to the following:
  - Minnesota Association of Public Accountants (MAPA)
  - Minnesota Society of Enrolled Agents
  - Minnesota Society of Certified Public Accountants
  - Accountability Minnesota
  - H & R Block (district coordinators)
  - National Association of Computerized Tax Processors
  - Tax Section for the Minnesota Bar Association
  - as well as any individual requesting notice who is not already on the agency’s regular rulemaking mailing list.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department’s rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a. We will give notice to the Legislature per *Minnesota Statutes*, section 14.116.

## RULE ANALYSIS

*Minnesota Statutes*, chapter 14, requires the Department to explain the facts establishing the need for and reasonableness of the rules as proposed. "Need" means that a problem exists which requires administrative attention. "Reasonableness" means that there is a rational basis for the Department's proposed action. The need for and reasonableness of the proposed rules, amending *Minnesota Rules, Part 8052.0300*, is here explained.

Subpart 1 is amended to update the application of the subpart from income and property tax refund laws only, to any law administered by the commissioner as defined in *Minnesota Statutes*, section 270C.01, subdivision 5. This is justified by tracing the legislative history of the underlying statute. At the time this rule was originally promulgated as a regulation in MCAR in 1981, the specific statutory authority for the rule was *Minnesota Statutes*, section 290.52, which provided in pertinent part as follows:

The commissioner may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commissioner, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their case. Such commissioner may, after due notice and opportunity for hearing, suspend and disbar from further practice before him, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations.

This statute, which was in the income tax chapter, was repealed in 1990 and moved into *Minnesota Statutes*, Chapter 270, the general powers and procedures chapter of the Department of Revenue. The statute was recodified as *Minnesota Statutes*, section 270.06, clause (15). (See *Minnesota Laws 1990*, Chapter 480, Article 2, Section 1.) Then, in 2005, the same provision was moved again into Chapter 270C, the new general powers and procedures chapter of the Department of Revenue. The statute was recodified as *Minnesota Statutes*, section 270C.44. (See *Minnesota Laws 2005*, Chapter 151, Article 1, Section 53.) Thus, as shown by the legislative history of the statute which this subpart interprets, the law was changed from an income tax law to a general tax law. That is why the definition of law administered by the commissioner in section 270C.01, subdivision 5, is incorporated into the rule. Furthermore, section 270C.44 governs representation of "taxpayers", which in turn is defined in section 270C.01, subdivision 11, as someone required to pay, file returns, obtain a license or permit, or furnish records for, "a tax or fee imposed by a *law administered by the commissioner*". (Emphasis added.) Also, language is added to this subpart to have "state tax" synonymous with a tax or fee imposed by a "law administered by the commissioner" for purposes of the rule, to fit within the context of what is being amended in subparts 5 and 6. This is reasonable, as *Minnesota Statutes*, section 270C.01, subdivision 10, defines "tax" to mean "a tax or fee imposed by a law administered by the commissioner." Finally, the phrase "upon filing an executed power of attorney" is deleted from this subpart, because as set forth in subpart 2, a power of attorney is not needed in order to practice under this rule when the taxpayer is present.

Subpart 2 is outdated, and therefore is revised to reflect current administrative practice and procedure on the use of powers of attorney. The first paragraph is amended to reflect that the Department of Revenue has its own version of a power of attorney form, but that other types of power of attorney forms are also acceptable. This is to recognize situations where an Internal Revenue Service power of attorney includes state tax matters that are affected by the federal tax matters, to conform to the general laws pertaining to powers of attorney found in *Minnesota Statutes*, Chapter 523, and to provide the administrative flexibility of accepting other documents that reflect the intent of the taxpayer to authorize representation. The second paragraph is amended to apply to all tax types, for the same rationale as discussed regarding subpart 1, above. Namely, a "taxpayer" as defined under section 270C.01, subdivision 11, is required to file returns for a tax or fee imposed by a law administered by the commissioner, and "return" is defined by section 270C.01, subdivision 8, as "a return, information return, or report, required by a *law administered by the commissioner*". (Emphasis added.) The third paragraph is amended to clarify that: (a) for disclosure of information purposes, powers of attorney are only needed for the types of taxes that are not public; (b) the Department of Revenue does accept powers of attorney which confer blanket powers upon the attorney-in-fact; and (c) photocopies and electronically transmitted copies of powers of attorney are acceptable, pursuant to Revenue Notice 92-07, as modified and published in the *State Register* on May 31, 2005. This is needed because taxpayers and their representatives are not always aware of when a power of attorney is required in order to have access to taxpayer information and when it is not.

Subpart 3 is amended to provide a cross reference to the statute that limits the ability of ex-employees to represent taxpayers before the Department of Revenue. Some former employees of the Department represent taxpayers, and this is needed to put them and taxpayers on notice that certain limitations exist.

Subparts 5 and 6 are amended to conform to the changes to subparts 1 and 2, by striking the word "income" or words "Minnesota income" wherever they appear and replacing them with the word "state". This expands the application of these subparts from income tax only to all state taxes, for the same reasons as discussed regarding subpart 1, above. Using the term "state taxes" instead of "a tax or fee imposed by a law administered by the commissioner" is reasonable and necessary for readability and understanding of these subparts. As noted above, that is why subpart 1 is amended to have these terms mean the same thing for purposes of the rule. Also, the term "state tax" is used instead of "Minnesota tax," because the regulation as originally written in 1981 was attempting to distinguish Minnesota income tax from federal income tax, and because of these amendments that is no longer a concern.

#### LIST OF WITNESSES

If these rules go to a public hearing, the Department does not anticipate calling any witnesses, although Department employees may be called to testify in support of the rules.

#### CONCLUSION

Based upon the foregoing, the proposed rules are both needed and reasonable.

6-3-2010

Date



Ward Einess  
Commissioner of Revenue

## Minnesota Department of Revenue

### **DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received**

### **Proposed Amendment to Rules Governing Practice of Attorneys, Accountants, Agents, and Preparers before Department of Revenue; Minnesota Rules, part 8052.0300**

**Introduction.** The Department of Revenue intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on July 21, 2010, a public hearing will be held at the Minnesota Department of Revenue, Conference Room 2010, 2nd Floor, Stassen Building, 600 North Robert Street, St. Paul, Minnesota 55146, starting at 9:30 a.m. on August 3, 2010, and continuing until the hearing is completed. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after July 21, 2010, and before August 3, 2010,

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is:

Richard Walzer, Attorney  
Appeals and Legal Services Division  
Minnesota Department of Revenue  
600 North Robert Street  
St. Paul Minnesota, 55146-2220  
(651) 556-4093  
(651) 296-8229 (FAX)  
Rick.Walzer@state.mn.us  
TTY users may call the Department at TTY 711

**Subject of Rules and Statutory Authority.** The proposed amendment to the rules governing practice of attorneys, accountants, agents, and preparers before the Department of Revenue expands the scope of the rules from only certain tax types to all tax types administered by the Commissioner of Revenue; clarifies which types of power of attorney forms are acceptable; and clarifies when powers of attorney are needed for disclosure of information purposes. The Department's statutory authority to adopt these rules is set forth in *Minnesota Statutes*, section 270C.44, which provides that the Commissioner shall prescribe rules governing the qualification and practice of agents, attorneys, or other persons representing taxpayers before the Commissioner; and section 270C.06, which gives the Commissioner general rulemaking authority. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. on July 21, 2010, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and

any change proposed. You are encouraged to propose any change that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on July 21, 2010. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, the Department can make this Notice available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Department may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The Department will cancel the hearing scheduled for August 3, 2010, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at (651) 556-4093 after July 21, 2010, to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Kathleen D. Sheehy, is assigned to conduct the hearing. Judge Sheehy can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361- 7848, and FAX (651)-361-7936.

**Hearing Procedure.** If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also



submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person, and will be posted on the agency's website, [www.taxes.state.mn.us](http://www.taxes.state.mn.us). You may review or obtain copies for the cost of reproduction by contacting the agency contact person.

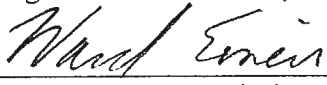
**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure After a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

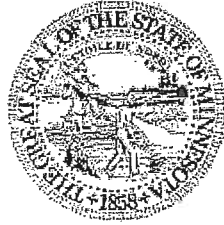
**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

6-3-2010  
Date

  
\_\_\_\_\_  
Ward Einess, Commissioner  
Minnesota Department of Revenue

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Practice before the Department of Revenue

**AGENCY:** Department of Revenue

**MINNESOTA RULES:** Chapter 8052

The attached rules are approved for  
publication in the State Register

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

John R. McCullough  
Assistant Revisor

5.1 (2) specific material misrepresentations regarding experience or education,  
5.2 whether general or specialized, as ~~an income~~ a state tax return preparer;

5.3 [For text of subitems (3) and (4), see M.R.]

5.4 J. Approving for filing, or advising or aiding in the preparation of, a false or  
5.5 fraudulent ~~Minnesota income~~ state tax return prepared by some other person, knowing  
5.6 the return is false or fraudulent.

5.7 [For text of items K to P, see M.R.]

5.8 Q. For purposes of items A to P, the phrases "~~income~~ state tax" and "~~income~~  
5.9 state tax return" include all matters referred to in subpart 2, second paragraph.

1.1 **Department of Revenue**1.2 **Proposed Permanent Rules Relating to Practice before the Department of Revenue**1.3 **8052.0300 PRACTICE OF ATTORNEYS, ACCOUNTANTS, AGENTS, AND**  
1.4 **PREPARERS BEFORE DEPARTMENT OF REVENUE.**

1.5 Subpart 1. **Practice defined.** The term "practice" comprehends all matters connected  
1.6 with the presentation by an attorney, accountant, agent, or preparer to the Department  
1.7 of Revenue or any of its employees, ~~upon filing an executed power of attorney,~~ of a  
1.8 client's rights, privileges, or liabilities under a law administered by the commissioner  
1.9 as defined in Minnesota Statutes, ~~chapter 290 or 290A~~ section 270C.01, subdivision  
1.10 5, and the rules thereunder. "Practice" includes the preparation and filing of necessary  
1.11 documents, correspondence with and communication to the Department of Revenue,  
1.12 and the representation of a client at conferences, hearings, and meetings. However, the  
1.13 preparation and signing of a tax return, the appearance of an individual as a witness  
1.14 for a taxpayer, and the furnishing of information at the request of the Department of  
1.15 Revenue or any of its employees do not, of and by themselves, constitute practice before  
1.16 the department, unless these acts are coupled with the presentation of a client's case at  
1.17 conferences, hearings, or meetings. For purposes of this rule, the term "practice" is  
1.18 synonymous with "representation," and the term "state tax" is synonymous with a tax or  
1.19 fee imposed by a "law administered by the commissioner."

1.20 Subp. 2. **Scope of representation pursuant to power of attorney.** When authorized  
1.21 by the taxpayer through a written power of attorney, an attorney, accountant, agent, or  
1.22 preparer may appear as the taxpayer's representative, without the taxpayer, before an  
1.23 employee of the Department of Revenue with respect to the tax liability of the taxpayer  
1.24 for the type of tax and taxable year or period authorized in the power of attorney. A  
1.25 written power of attorney is not required if the taxpayer is present. For purposes of this  
1.26 part, "written power of attorney" means the signed original or a copy of the signed original  
1.27 of any of the following:

- 2.1           A. the power of attorney form designed and printed by the Department of  
 2.2 Revenue;
- 2.3           B. an Internal Revenue Service power of attorney if it is modified to include  
 2.4 state taxes;
- 2.5           C. a power of attorney under Minnesota Statutes, chapter 523, if it is filled out  
 2.6 to include tax matters or generally to include all matters; or
- 2.7           D. any other document which has all the necessary legal elements for creating  
 2.8 a power of attorney and is broad enough to cover taxes.

2.9           For purposes of this part, a power of attorney grants authority to deal with any  
 2.10 ~~of the following: original or amended individual income tax returns; property tax refund~~  
 2.11 ~~returns; fiduciary income tax returns; partnership returns of income; corporation franchise~~  
 2.12 ~~tax returns, including returns of small business corporations, life insurance companies,~~  
 2.13 ~~banks, and savings associations; employer's income tax withholding returns or deposits;~~  
 2.14 ~~estate tax returns; claims for refund; and estimated tax declarations~~ return as defined in  
 2.15 Minnesota Statutes, section 270C.01, subdivision 8.

2.16           For taxes which are classified as private data on individuals or nonpublic data not  
 2.17 on individuals, a taxpayer representative may inspect only those state records, files,  
 2.18 or documents which are either: (a) specifically listed; or in; (b) directly or indirectly  
 2.19 connected with matters specifically listed; in; or (c) covered by the terms of, a power of  
 2.20 attorney. The signed power of attorney form may be transmitted to the Department of  
 2.21 Revenue by facsimile or by electronic transmission as an imaged attachment in a format  
 2.22 that cannot be altered.

2.23           If the taxpayer is not present, a person presenting a power of attorney shall present  
 2.24 identification satisfactory to the department employee.

2.25           Subp. 3. **Persons ineligible to practice.** A person shall be ineligible to appear as a  
 2.26 taxpayer representative under this part, if the person is:

- 3.1 A. barred or suspended from practice before the Department of Revenue;
- 3.2 B. an employee of the Department of Revenue;
- 3.3 C. barred or suspended from practice as an attorney, certified public accountant,
- 3.4 or licensed public accountant in the state of Minnesota; ~~or~~
- 3.5 D. barred or suspended from practice before the Internal Revenue Service; or
- 3.6 E. a former employee of the Department of Revenue, to the extent provided
- 3.7 in Minnesota Statutes, section 270C.10.

3.8 However, with regard to items C and D, a granting of reinstatement to practice as  
 3.9 an attorney, certified public accountant, or licensed public accountant, or a granting of  
 3.10 reinstatement to practice before the Internal Revenue Service shall automatically reinstate  
 3.11 a person's eligibility to practice before the Department of Revenue if the person is not  
 3.12 otherwise ineligible under item A, B, or E.

3.13 [For text of subp 4, see M.R.]

3.14 Subp. 5. **Incompetent conduct.** Incompetent conduct, for which any attorney,  
 3.15 accountant, agent, or preparer may be barred or suspended from practice before the  
 3.16 Department of Revenue, means the failure by an attorney, accountant, agent, or preparer,  
 3.17 after due warning has been given by the commissioner of revenue pursuant to part  
 3.18 8052.0400, subpart 3, to:

- 3.19 A. demonstrate the familiarity with the income state tax statutes, rules, and
- 3.20 forms necessary to enable the practitioner to properly apply, discuss, or complete them,
- 3.21 and thus to render adequate services in connection with a taxpayer's case before the
- 3.22 Department of Revenue; or

3.23 [For text of item B, see M.R.]

3.24 Subp. 6. **Disreputable conduct.** Disreputable conduct, for which any attorney,  
 3.25 accountant, agent, or preparer may be barred or suspended from practice before the

4.1 Department of Revenue, includes any conduct that violates subpart 4. In addition, the  
4.2 following acts or events constitute disreputable conduct:

4.3 [For text of item A, see M.R.]

4.4 B. Preparing or filing for oneself or another a false or fraudulent ~~Minnesota~~  
4.5 ~~income state~~ tax return or other statement on which ~~Minnesota income state~~ taxes or a  
4.6 refund thereof may be based, knowing it is false or fraudulent.

4.7 C. Willful failure to prepare or file a ~~Minnesota income state~~ tax return for  
4.8 oneself or another in violation of the applicable ~~income tax~~ statutes or rules.

4.9 D. Willful failure to prepare and file an amended ~~Minnesota income state~~ tax  
4.10 return for oneself, knowing that a material error or omission was made on the original  
4.11 return.

4.12 E. Willful failure to recommend to a client that an amended ~~Minnesota income~~  
4.13 ~~state tax~~ return be prepared and filed, knowing that a material error or omission was  
4.14 made on the original return.

4.15 F. Advising a client or a prospective client to adopt a ~~Minnesota income state~~  
4.16 tax evasion plan which is not legal, knowing that the plan is not legal.

4.17 G. Giving false testimony or information in any proceeding before the  
4.18 Department of Revenue, or before any tribunal authorized to pass upon ~~Minnesota income~~  
4.19 ~~state tax~~ matters, knowing it is false.

4.20 [For text of item H, see M.R.]

4.21 I. Using, with intent to deceive, false representations to procure employment in  
4.22 any case or proceeding before the Department of Revenue, including, but not limited to:

4.23 [For text of subitem (1), see M.R.]