

453A.46 Distributors, monthly returns interest, penalties.

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; made, manufactured, or fabricated in this state for sale in this state; and any other information the director may require. Every licensed distributor outside this state shall in like manner file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers and any other information the director may require. Returns shall be made upon forms furnished or made available in electronic form and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The three-year limitation period may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the extension period and the tax period to which the extension applies. The agreement must also stipulate that a claim for refund may be filed by the taxpayer at any time during the extension period.

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall also pay a penalty as provided in section 421.27 and be subject to the civil penalties set forth in sections 421.27; 453A.31, subsection 2; and 453A.50, subsection 3, as applicable.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The

return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

7. The director may require by rule that reports* be filed by electronic transmission.

[C71, 73, 75, 77, 79, 81, § 98.46]

84 Acts, ch 1173, § 2; 86 Acts, ch 1007, § 9; 87 Acts, ch 199, § 2, 3; 90 Acts, ch 1172, § 2

C93, § 453A.46

94 Acts, ch 1133, §14, 16; 99 Acts, ch 151, §83, 89; 2004 Acts, ch 1073, §48; 2007 Acts, ch 186, §48, 49

*The word "returns" probably intended; corrective legislation is pending