

**424.10 Failure to file return — incorrect return.**

1. As soon as practicable after a return is filed and in any event within three years after the return is filed the department shall examine it, assess and determine the charge due if the return is found to be incorrect, and give notice to the depositor of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. *a.* If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of the determination to the person liable for the charge. The determination shall fix the charge unless the person against whom it is assessed shall, within sixty days after the date of the notice of the determination, apply to the director for a hearing or unless the person against whom it is assessed contests the determination by paying the charge, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the charge.

*b.* If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within three years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount 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 charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

89 Acts, ch 131, §22; 94 Acts, ch 1133, §8, 16; 99 Acts, ch 151, §40, 89; 2001 Acts, ch 116, §18; 2001 Acts, ch 150, §8; 2005 Acts, ch 140, §51; 2011 Acts, ch 25, §143