

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 667

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1.16.81
DATE FOR REVIEW 1.24.81
DATE DUE 1.30.80

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved _____ Disapproved 1/30 Returned to Agency _____

Resubmitted 2/27 Due 3/9
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.9.81

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
_____ ~~Date of Hearing~~

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency see my comment re statutory authority

✓ Affidavit of Mailing Notice of rulemaking
12.1.80 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ At least 30/~~20 days~~ prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

see memo from Allan Klein, 1/8/81

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : DUANE R. HARVES
Chief Hearing Examiner

DATE: March 4, 1981

ATTN : J. Michael Miles

FROM : H. Theodore Grindal
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

OFFICE OF ADMINISTRATIVE HEARINGS

Rules as Adopted Governing Revenue Recapture Act Hearings

9 MCAR § 2.501 Scope and waiver of these rules

A. Scope. These rules govern hearings between state agencies and taxpayers based on the Revenue Recapture Act, (Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minnesota Statutes, Sections 270A.01 to 270A.12 (1980)). In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

B. Waiver and modification. Upon request of all parties, the hearing examiner shall waive or modify any of these rules provided that such waiver or modification does not conflict with any provision of Minn. Stat. §§ 15.0418 to 15.0426, § 15.052, or §S 270A.01 to 270A.12 (1980).

9 MCAR § 2.502 Definitions.

A. Agency, claimant agency: Agency or claimant agency means the state or public agency asserting a claim to a tax refund.

B. Debtor: Debtor means a natural person whose tax refund is the subject of a claim by the claimant agency.

C. Party: Party means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to 9 MCAR § 2.506 of these rules.

D. Service, serve: Service or serve may be accomplished by either:

1. Delivering a document to an individual in person or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution; or,

2. Mailing the document to the person by first class United States mail. Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the State of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

9 MCAR § 2.503 Initiating a hearing.

A. Request for assignment. Any agency desiring to order a hearing shall first contact the Chief Hearing Examiner or his designee and request the assignment of an examiner. The request shall include a proposed date, time and place for the hearing. If requested by the Chief Hearing Examiner or his designee, the agency shall file a copy of the Notice of Hearing proposed to be issued.

B. Assignment. Within ten days of the receipt of a request, the Chief Hearing Examiner or his designee shall assign an examiner to hear the case. Unless the Chief Hearing Examiner or his designee have already agreed with the agency, the examiner shall advise the agency as to the location, date and time for the hearing. In offering such advice, the examiner shall consider the location of known parties, witnesses and other participants so as to maximize convenience and minimize cost. After reaching agreement with the Chief Hearing Examiner or his designee or upon receiving advice from the examiner, the agency shall issue the Notice of Hearing.

9 MCAR § 2.504 The Notice of Hearing.

A. The Notice of Hearing shall be served at least 20 days before the hearing.

B. Content of notice. The Notice of Hearing shall be served upon all parties. The notice shall be worded in clear, nontechnical language and shall contain, at a minimum, the following:

1. The time, date and place for the hearing.

2. The name, address and telephone number of the hearing examiner.

3. A statement of the allegations or issues to be determined at the hearing, together with a citation to any relevant statutes and rules. If the debt arises from more than one event or transaction, each event or transaction shall be noted.

4. A citation to the statutory authority to hold the hearing and to take the action proposed.

5. A citation to these rules, and notification of how copies may be obtained.

6. A brief description of the procedure to be followed at the hearing.

7. The name, address and telephone number of the agency representative to be contacted to discuss informal disposition of the dispute, along with an explanation of the types of informal disposition which the agency might consider.

8. Notification that a party need not be represented by an attorney but may choose to be represented by an attorney or any other person of their choice.

9. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position. In addition, a statement that subpoenas may be available to compel the attendance of

witnesses or the production of documents and a reference to the rule relating to subpoenas, 9 MCAR § 2.509.

10. A statement advising parties that failure to appear at the hearing will result in the allegations of the Notice being taken as true, and a statement which explains the possible results if the allegations are taken as true.

9 MCAR § 2.505 Default.

A. A default occurs when a party fails to appear at a hearing.

B. If the claimant agency appears at a hearing but the debtor does not, the allegations in the Notice of Hearing shall be taken as true and deemed proved without further evidence. If the debtor appears at a hearing, but the claimant agency fails to appear, the examiner shall recommend that the hearing be dismissed with prejudice. If neither the claimant party nor the debtor appear at a hearing, the examiner shall recommend that the case be dismissed with prejudice.

9 MCAR § 2.506. Additional parties - intervention.

A. Petition. Any person not named in the Notice of Hearing who desires to participate as a party shall submit a written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. The petition shall show (1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding, (2) shall set forth the grounds and purposes for which intervention is sought, and (3) shall indicate petitioner's statutory right to intervene if one should exist.

B. Objection. Any party may object to the petition for intervention by filing a written Notice of Objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The Notice shall state the party's reasons for objection and a copy shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

C. Order. The examiner shall allow intervention upon a proper showing pursuant to paragraph A. above unless the examiner finds that the Petitioner's interest is adequately represented by one or more other parties participating in the case.

9 MCAR § 2.507. Prehearing procedures.

A. Prehearing conference. Upon the request of any party or upon his/her own motion, the examiner shall hold a prehearing conference prior to the hearing if the amount in controversy in any case exceeds $1,000.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's Notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing.

2. Procedure. A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

B. Prehearing motions. If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

9 MCAR § 2.508. Prehearing discovery.

A party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing. The demand shall be in writing and shall be directed to the party or his/her attorney. Responses to the demand shall be served within ten days of receipt of the demand. Any witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Any party unreasonably failing, upon demand, to make such disclosure shall be foreclosed from presenting any evidence at the hearing through an undisclosed witness.

9 MCAR § 2.509. Subpoenas.

A. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate:

1. The name and address of the person upon whom the subpoena will be served;

2. A brief statement of the potential relevance of the testimony or documents sought;

3. If the subpoena request is for the production of documents, the documents sought should be identified with specificity.

B. Service of subpoenas. Subpoenas shall be served personally in the manner provided in 9 MCAR § 2.502 D.1. They shall not be served by mail. The witness fees applicable in the District Courts pursuant to Minn. Stat. § 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are $10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place of attendance, to be estimated from the witness' residence.

C. Objection to a subpoena. Any person served with a subpoena who has an objection to it may file an objection with the examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive, taking into account (1) the issues or amounts in controversy, (2) the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and (3) whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers or other tangible things.

9 MCAR § 2.510. Changes in date, time or place.

A. Requests. Any party who desires to change the date, time or place from that announced in the Notice of Hearing shall contact the other known parties, or their representatives, and seek agreement regarding a new time, date or place. If the parties can agree, and if the examiner's schedule allows, the examiner shall approve the change.

B. Notice. If time permits, the agency shall send a written notice to all parties and the examiner setting forth the new time, date or place.

C. Continuances during a hearing. If it appears in the interest of justice that further evidence should be received, the examiner shall continue the

hearing to a future date. Oral notice on the record shall be sufficient notice of the additional date.

9 MCAR § 2.511. Conduct of the Hearing.

The hearing shall be conducted substantially in the following manner:

A. The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency and briefly stating the facts as alleged in the Notice of Hearing which give rise to the claim.

B. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

C. The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

D. Testimony may be given in narrative fashion by witnesses rather than by question and answer format.

E. Cross-Examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

F. Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

G. A party may question an adverse party or any witness identified with an adverse party, by leading questions and contradict and impeach him/her on material matters.

H. When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under 9 MCAR § 2.510.

9 MCAR § 2.512. Rights and obligations of parties.

A. Be prepared. A party shall have all evidence to be presented, both oral and written, available on the date set for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party.

B. Respond to orders from the examiner. If the examiner orders that parties do an act, or not do an act, the parties shall comply with the order. If a party objects to an order, such objection shall be stated in advance of the order as part of the record.

C. Right to receive copies. The examiner shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the examiner shall simultaneously send a copy to all other parties, provided, however, that this requirement shall not apply to requests for subpoenas.

D. Right to counsel and communication with represented party. A party need not be represented by an attorney. He/she may represent himself/herself, or may be represented by an attorney or any other person of his/her choice. If a party has notified other parties that he/she will be represented by an attorney, all communications shall be directed to that attorney.

9 MCAR § 2.513. Rights and obligations of non-parties.

A. Testify and offer evidence. Any person may offer testimony or other evidence relevant to the case. Any non-party offering testimony or other evidence may be questioned by parties to the proceeding.

B. Question witnesses. Generally, non-parties shall not be allowed to question witnesses, provided, however, that the examiner may allow such questioning if he/she deems it necessary for the development of a full and complete record.

9 MCAR § 2.514. Rights and obligations of the examiner.

A. Impartiality. An examiner assigned to a case shall be free of any personal, political or economic association that would impair his/her ability to function in a fair and objective manner. Should an examiner believe that he/she cannot comply with this rule, he/she shall withdraw from the case.

B. Communication with parties or others. The examiner shall not communicate, directly or indirectly, with any person or party concerning any issue of fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate. When these rules authorize communications contrary to this prohibition, such communications shall be limited to only those matters permitted by these rules.

C. Duties. Consistent with law and these rules, the examiner shall perform the following duties:

1. Receive, and recommend action to the Chief Hearing Examiner upon receipt of, requests for subpoenas.

2. Hear and rule on motions.

3. Preside at the hearing.

4. Administer oaths and affirmations.

5. Grant or deny continuances.

6. Examine witnesses where deemed necessary to make a complete record.

7. Prepare findings of fact, conclusions and recommendations.

8. Make preliminary, interlocutory or other orders as deemed necessary to assure a fair hearing.

9. Recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons.

10. Do all things necessary and proper to the performance of the foregoing.

9 MCAR § 2.515. Rules of evidence.

A. General rules. The examiner shall admit all evidence which logically tends to prove or disprove an important fact, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

B. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the claimant agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

C. Documentary evidence. Documentary evidence may be introduced in the form of copies or excerpts or may be incorporated by reference into the record. Copies of a document shall be received to the same extent as the original

document unless (1) a genuine question is raised as to the accuracy or authenticity of the copy or (2) in the circumstances, it would be unfair to admit the copy in lieu of the original.

D. Notice of facts. The examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

9 MCAR § 2.516. Burden and standard of proof. The claimant agency shall have the burden of proving the amount and existence of the debt and its right to collect the debt by a preponderance of the evidence. If the debtor asserts any affirmative defenses, the debtor shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

9 MCAR § 2.517. Timing of the decision. Following the close of the record, the examiner shall make his/her report pursuant to Minn. Stat. § 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties.

9 MCAR § 2.518. The record.

A. The examiner shall maintain the official record in each case until the issuance of the report, at which time the record (except for the audio-magnetic recordings thereof) shall be sent to the agency.

B. What the record shall contain. The record shall contain:

1. The Notice of Hearing and all motions and orders which have been reduced to writing;

2. Evidence received or considered;

3. An audio-magnetic recording of the hearing;

4. The examiner's report;

5. All memoranda or data submitted by any party in connection with the case;

6. The transcript of the hearing, if one was prepared.

C. The record of the contested case proceeding shall be closed upon the completion of the testimony, receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the parties and the examiner have agreed should be received into the record, whichever occurs latest.

D. The transcript. The audio-magnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' Account in the State Treasury.

9 MCAR § 2.519. Disruption of the hearing.

A. Cameras. Television, newsreel, motion picture, still or other cameras may be operated in the hearing room during the course of the hearing unless the examiner determines that such operation is disrupting the hearing.

B. Recordings. The official audio-magnetic recording of the hearing shall be made by the examiner. Any party may also record all or part of the proceedings. Non-parties may record all or part of the proceedings unless the examiner determines that such recording is disrupting the hearing. In the event of failure of recording equipment, the examiner may direct any person or party to provide the examiner with the original or a copy of any recording of the proceeding upon payment of the cost of the recording medium.

C. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

9 MCAR § 2.520. Rehearing. Any agency Notice of and Order for Rehearing shall be served on all parties in the same manner prescribed for the Notice of and Order for Hearing, provided that the examiner shall permit service of the Notice and Order for Rehearing less than 20 days prior to rehearing if the parties agree to such earlier service. The rehearing shall be conducted in the same manner prescribed for a hearing.

9 MCAR § 2.521. Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

[Not to be Codified] Effectiveness. Five working days after final publication in the State Register, these rules shall be applied to all hearings to be commenced thereafter and commenced previously, but not yet completed, provided that for cases in progress, only those portions of the rules shall apply to the portion of the hearing process not yet completed.

APPROVED AS TO FORM AND LEGALITY

March 3 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY H Theodore Gruda

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 3 1981
Joan Anderson Growe
Secretary of State

3:45 P.M.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings.

AMENDED ORDER ADOPTING RULES

Notice of the intent of the Chief Hearing Examiner to adopt the above-entitled rules without a public hearing was published in the State Register on December 1, 1980, and was sent by United States mail to all persons on the list maintained by the office pursuant to Minn. Stat. § 15.0412, subd. 4, on December 1, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the proposed rules, the Chief Hearing Examiner ordered that the Rules be adopted on January 9, 1981.

Following a review of the rules by the Assistant Attorney General assigned to the Office, the rules were submitted to the Attorney General pursuant to Minn. Stat. § 15.0412, subd. 4h. On January 30, 1981, the Attorney General notified the Chief Hearing Examiner that the rules had not been approved for a number of reasons. Following receipt of that memorandum, certain changes were made to the rules in order to conform them to the comments of the Attorney General.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Procedural Rules Governing Revenue Recapture Act Hearings, as amended, are adopted this 17th day of February, 1981, pursuant to the authority vested in me by Minnesota Statutes, § 15.052.

STATE OF MINNESOTA

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings.

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STATE OF MINNESOTA

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : H. THEODORE GRINDAL
Special Assistant Attorney General

DATE: 2-18-81

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: Summary of Changes in Response to Your Comments - Revenue Recapture Act Procedural Rules.

I thought it might be helpful to summarize all the changes made in response to your Memorandum of January 30, 1981.

The comments below are coded in the same manner as your memorandum:

√1. This change has been made as you suggested. See page 1.

2. I respectfully disagree with your comment. See attached memorandum.

√3. I agree with your comment and appreciate your pointing it out. A change has been made on page 1 of the Rules as adopted.

√4. Your comment is correct, however, it was our intent to have the Rules operate in this manner. See attached Memorandum. No change has been made.

√5. The cited rule has been changed to conform to your comment. See page 7.

√6. The cited rule has been amended to conform with your comment. See page 12.

√7. The cited rule has been changed to conform with your comment. See page 13.

√8. The objectionable portion of the cited rule has been deleted to conform to your comment. See page 4.

√9. The cited rule has been changed to conform to your comment. See page 7.

I trust that this disposes of your comments. We have already held a number of hearings under the Revenue Recapture Act, and have scheduled many more for the near future. I hope that these rules can become effective as soon as possible.

DRH/eag

RECEIVED
FEB 27 19
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : H. THEODORE GRINDAL
Special Assistant Attorney General

DATE: 2-18-81

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: Prehearing Conferences - Procedural Rules Governing Recapture Act Hearings.

By Memorandum of January 30, 1981, you indicated that the above-referenced rules were not approved because, in part, 9 MCAR § 2.507 places a $1,000 amount-in-controvery threshhold for prehearing conferences. You stated that this rule would conflict with 98 MCAR § 2.213, which allows prehearing conferences in the discretion of the hearing examiner without any dollar limitation.

It was the explicit intent of this office to provide a different set of rules for Revenue Recapture Act hearings (and other contested cases if the parties agreed to use these new rules) than the existing contested case rules would allow. Otherwise, there would be no need to adopt these rules, and we could simply follow the existing contested case rules.

There are numerous situations in which the proposed new rules do conflict with the existing contested case rules. That was entirely intentional, and we do not believe that it is any reason for a finding of defective form or legality.

DRH/eag

RECEIVED
FEB 27 19
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : H. THEODORE GRINDAL
Special Assistant Attorney General

DATE: 2-18-81

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: Adequacy of Notice - Procedural Rules Governing Revenue Recapture Act Hearings.

By memorandum dated January 30, 1981, you indicated that the above-referenced rules had not been approved because, in part, you believed the Notice of Intent to Adopt Rules Without a Public Hearing is defective. It would appear from your comment that you take objection to the emphasis and placement given certain information in the Notice. I respectfully disagree.

The Notice must be judged against the statutory standard (Minn. Stat. § 15.0412, subd. 4h), and the standard set forth in 9 MCAR § 2.102 C.3. The statute provides that the Agency must publish its Notice of Intent, together with the proposed rule. The rule, which is more specific, provides that the Notice shall contain:

> A statement or a description of the subjects and issues involved.

The rule further requires that if the proposed rules are not included with the Notice, "then the Notice must cleary indicate the nature and extent of the proposd rules". In this case, the rules were published (as required by statute) with the Notice but were not mailed.

The proposed rules of your office, 1 MCAR § 2.203 G.10. provides as follows:

> If the proposed rule is not attached to the Notice, the Notice must clearly state the nature and effect of the proposed rule . . . .

I would submit to you that it would be difficult to more clearly state the nature and effect of the proposed rule than was done in this case. The Notice clearly states:

> In addition, the rules provide that they may be used for other contested cases if all parties agree to their use.

The rules themselves, which were published with the Notice, provide, in the second sentence, as follows:

> In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them.

It would appear from your comment that you object to the emphasis and placement of that particular piece of information in the Notice. I would invite you to compare the Notice at issue with Exhibit D-2 attached to your proposed rules. Had the Office chosen to follow your exhibit, the statement describing the nature and extent of the proposed rules would have appeared as the second to the last paragraph in the Notice. In our Notice, the content of the rules is described in the third paragraph, which is the fifth to the last paragraph. If anything, we have given it more prominent placement and greater emphasis than your recommended format would require.

I am not aware of any Minnesota case dealing with this subject, nor did you cite any authority for your objection. I would direct your attention to Cooper, State Administrative Law, pp. 187-193. I would also direct your attention to Davis, Administrative Law Treatise (2d Ed.: 1978), § 6:25, particularly pages 572-577. Using those two sources, I am unable to locate any case invalidating a Notice because of emphasis or placement of an item within the Notice. Davis, in particular, offers examples of situations where rules have been invalidated because the Notice completely failed to state a material fact, but I cannot find a case where the emphasis or placement of an item in the Notice resulted in invalidation.

For the above reasons, I respectfully submit that the Notice is adequate and the rule ought to be approved as to form and legality.

DRH/eag

RECEIVED
FEB 27
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1 78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Duane Harves
Chief Hearing Examiner

DATE: January 30, 1981

FROM : H. Theodore Grindal HTG
Special Assistant
Attorney General

PHONE: 6-1288

SUBJECT: In the Matter of the Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings.

The above captioned rules have not been approved for the following reasons:

1. The three final copies of the rule are titled improperly. The correct title should be "Rules as Adopted Governing Revenue Recapture Act Hearings." Currently the title states "Rules as Proposed Governing Revenue Recapture Act Hearings."

2. The Notice of Intent to Adopt Rules without a Public Hearing dated November 17, 1980 appears to be defective. In effect, the rule creates a new informal contested case procedure which may be used if all parties agree to their use. In fact, this new procedure is not mentioned until the last sentence of the third paragraph of the Notice. If 9MCAR § 2.501 A. was amended to delete the second and third sentences, then the Notice would be appropriate.

3. In 9MCAR § 2.501 B. the hearing examiner shall "...upon request of all parties, ...waive or modify any of these rules." If, for example, both parties requested that 9MCAR § 2.515 regarding rules of evidence be waived, the hearing examiner would be forced to comply. This section should be amended to prevent results that violate Minnesota statute § 15.0418 et. seq.

4. In 9MCAR § 2.507 the examiner shall hold a prehearing conference prior to the hearing "if the amount in controversy in any case exceeds $1,000." This dollar limit would prevent prehearing conferences in informal contested cases where there isn't a sum certain in dispute. This policy would conflict with 9MCAR § 2.213 where the prehearing conference is discretionary according to the hearing examiner.

5. In 9MCAR § 2.509 B. the cite of Minn. Stat. § 357.22 is incorrect for fees providing for service of subpoenas in Minnesota district courts. This cite refers to witness fees, not fees for service of subpoenas.

6. In 9MCAR § 2.517 the reference to Minn. Stat. 315.0412, subd. 4d. is incorrect. This statute refers to rule making, not contested case proceedings.

7. In 9MCAR § 2.519 B. in the fourth line the word "deatermines," should be spelled "determines."

8. In 9MCAR § 2.506 A. the fourth line refers to timeliness of intervention of additional parties determined, "...by the examiner in each case based on circumstances at the time of filing." Such language provides excessive discretion to the hearing examiner. There should be criteria set forth enabling parties to determine when the hearing examiner has acted appropriately.

9. In 9MCAR § 2.509 C. the fourth and fifth line grants the examiner authority to cancel or modify a subpoena if he/she finds it is "unreasonable or oppressive." Such language provides unbridled discretion to the examiner in determining what subpoenas are unreasonable or oppressive. Criteria should be listed which would guide the examiner in making such a decision.

Upon consideration of the issues set forth in this memorandum, these rules may be resubmitted. At the time of resubmission to this office, please insure that the original and two copies of the Amended Order Adopting and the Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents. For administrative convenience, please designate the rules as resubmitted rules at the time of resubmission. If you have any questions in regard to this memorandum, please feel free to contact me.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS **Office Memorandum**

TO : JUDITH WEHRWEIN
Attorney General - Administration

DATE: 1-28-81

FROM : ALLAN W. KLEIN
Hearing Examiner

PHONE: 6-8104

SUBJECT: Office of Administrative Hearings' Proposed Procedural Rules Governing Revenue Recapture Act hearings.

After our conversation of Tuesday, January 27, I thought that it might be advisable for me to alert you (and Messrs. Grindal and Anderson) that I will be out of the office on January 29th and 30th.

Therefore, should you have any questions with regard to the proposed rules, please feel free to contact the Chief Hearing Examiner, Duane R. Harves, 296-8100. He will be able to answer questions, as well as make final decisions with regard to changes.

AWK/eag

RECEIVED
JAN 29 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Office of Administrative Hearings

Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings

Notice of Intent to Adopt Rules without a Public Hearing

The Office of Administrative Hearings hereby gives notice that it intends to adopt rules governing procedures for hearings held pursuant to the Revenue Recapture Act, Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minn. Stat. §§ 270A.01 to 270A.12 (1980). The Office has determined that this proposed adoption will be non-controversial, and has chosen to proceed without a public hearing pursuant to the provisions of Laws of Minnesota, 1980, Chapter 615, § 7, to be codified as Minn. Stat. § 15.0412, subd. 4(g) (1980). However, should seven or more persons submit a written request for a hearing in the manner provided below, the Office will hold a public hearing on its proposed adoption.

The proposed rules contain a complete set of procedures for the conduct of hearings to be held under the Revenue Recapture Act. That Act provides that if a person owes money to a state agency, or to a public agency responsible for child support enforcement, the claimant agency may request the Commissioner of Taxation to deduct the amount owing from the debtor's income tax refund or property tax credit or refund, and pay the amount deducted to the claimant agency. The Act provides for notice to the debtor and, in most cases, an opportunity for a contested case hearing where the debtor may contest the validity of the claim and the deduction. The rules being proposed by the Office govern procedures at such hearings.

The proposed rules are based upon the Office's existing Contested Case Rules, 9 MCAR §§ 2.201 - 2.222. However, they differ from those rules in many ways which can generally be described as simplifications and relaxations designed to provide a blend between procedures commonly followed in Conciliation Courts and procedures set forth in the Office's existing contested case rules. The rules contain provisions relating to scope, waiver, definitions, notice, default, intervention, prehearing procedures, discovery, subpoenas, continuance, hearing procedures, rights and obligations of parties, non-parties, and the Hearing Examiner, rules of evidence, burden of proof, the decision, the record, disruption of the hearing, rehearing, and miscellaneous other matters. In addition, the rules provide that they may be used for other contested cases if all parties agree to their use.

The Office has prepared a Statement of Need and Reasonableness in support of the proposed rules. Copies of the Statement may be obtained by contacting:

Eileen Gaiovnik
Office of Administrative Hearings
Room 300
1745 University Avenue
St. Paul, Minnesota, 55104
(612)296-8123

Interested persons are invited to submit written comments, views and data on the proposed rules to Allan W. Klein at the same address. Such comments should be submitted on or before January 2, 1980.

No public hearing will be held unless seven or more persons submit written requests for such a hearing. Such requests must be submitted on or before January 2, 1980, and should be directed to Mr. Klein at the address given above. If seven or more persons submit requests, the Office will publish a

Notice of Hearing in the State Register and will follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4-4(f) (1980).

If no public hearing is required, the Office will review the comments, views and data submitted. The Office may modify the proposed rules if the modifications are supported by the data and views submitted, so long as the modifications do not result in a substantial change. The Office will then submit the rules as proposed for adoption, along with all comments and other materials required by statute, to the Attorney General. If any person desires to be informed of this submission to the Attorney General, they should submit a separate written request to Mr. Klein by January 2, 1981. If approved by the Attorney General, the rules will become effective upon publication in the State Register in the manner provided in Minn. Stat. § 15.0412, subd. 4(f) (1980).

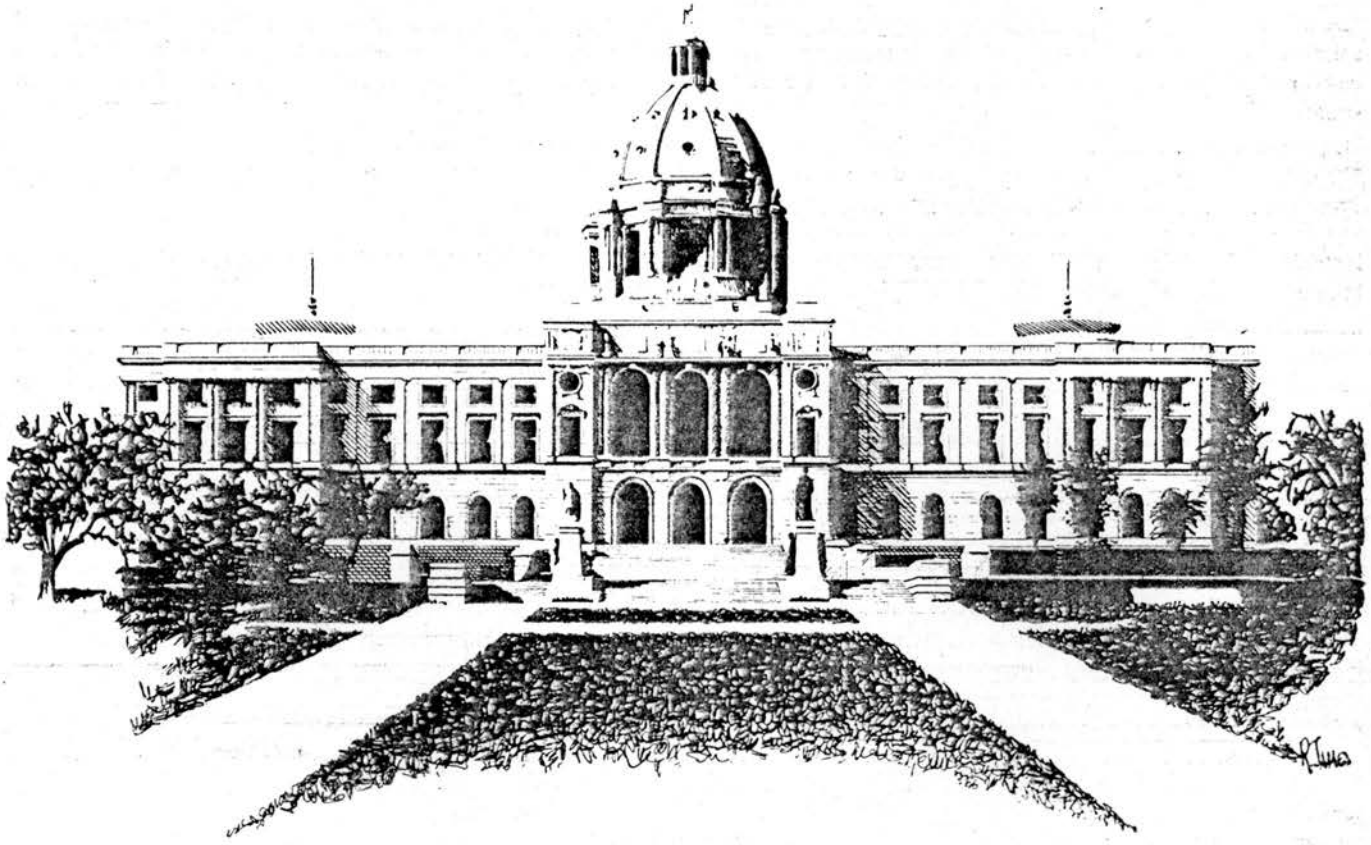
Dated this 17th of November, 1980.

/s/ Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

RECEIVED
NOV 26 1980
OFFICE OF HEARING
EXAMINERS

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 22

December 1, 1980

Pages 863-910

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
December 8-12, 1980

Date	Agency and Rule Matter	Time & Place
Dec. 11	Employee Relations Department Restoration of Seniority; and the Travel Rule Regarding Reimbursement for Special Expenses Hearing Examiner: Jon L. Lunde	9:30 a.m., Dept of Employee Relations Offices, Training Rm., 3rd Floor Space Center Bldg., 444 Lafayette Rd., St. Paul, MN

Office of Administrative Hearings

Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings

Notice of Intent to Adopt Rules without A Public Hearing

The Office of Administrative Hearings hereby gives notice that it intends to adopt rules governing procedures for hearings held pursuant to the Revenue Recapture Act, Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minn. Stat. §§ 270A.01 to 270A.12 (1980). The Office has determined that this proposed adoption will be non-controversial, and has chosen to proceed without a public hearing pursuant to the provisions of Laws of Minnesota, 1980, Chapter 615, § 7, to be codified as Minn. Stat. § 15.0412, subd. 4(g) (1980). However, should seven or more persons submit a written request for a hearing in the manner provided below, the Office will hold a public hearing on its proposed adoption.

The proposed rules contain a complete set of procedures for the conduct of hearings to be held under the Revenue Recapture Act. That Act provides that if a person owes money to a state agency, or to a public agency responsible for child support enforcement, the claimant agency may request the Commissioner of Taxation to deduct the amount owing from the debtor's income tax refund or property tax credit or refund, and pay the amount deducted to the claimant agency. The Act provides for notice to the debtor and, in most cases, an opportunity for a contested case hearing where the debtor may contest the validity of the claim and the deduction. The rules being proposed by the Office govern procedures at such hearings.

The proposed rules are based upon the Office's existing Contested Case Rules, 9 MCAR §§ 2.201-2.222. However, they differ from those rules in many ways which can generally be described as simplifications and relaxations designed to provide a blend between procedures commonly followed in Conciliation Courts and procedures set forth in the Office's existing contested case rules. The rules contain provisions relating to scope, waiver, definitions, notice, default, intervention, prehearing procedures,

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discovery, subpoenas, continuance, hearing procedures, rights and obligations of parties, non-parties, and the hearing examiner, rules of evidence, burden of proof, the decision, the record, disruption of the hearing, rehearing, and miscellaneous other matters. In addition, the rules provide that they may be used for other contested cases if all parties agree to their use.

The Office has prepared a Statement of Need and Reasonableness in support of the proposed rules. Copies of the Statement may be obtained by contacting:

Eileen Gaiovnik
Office of Administrative Hearings
Room 300
1745 University Avenue
St. Paul, Minnesota, 55104
(612) 296-8123

Interested persons are invited to submit written comments, views and data on the proposed rules to Allan W. Klein at the same address. Such comments should be submitted on or before January 2, 1981.

No public hearing will be held unless seven or more persons submit written requests for such a hearing. Such requests must be submitted on or before January 2, 1981, and should be directed to Mr. Klein at the address given above. If seven or more persons submit requests, the Office will publish a Notice of Hearing in the *State Register* and will follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4-4(f) (1980).

If no public hearing is required, the Office will review the comments, views and data submitted. The Office may modify the proposed rules if the modifications are supported by the data and views submitted, so long as the modifications do not result in a substantial change. The Office will then submit the rules as proposed for adoption, along with all comments and other materials required by statute, to the Attorney General. If any person desires to be informed of this submission to the Attorney General, they should submit a separate written request to Mr. Klein by January 2, 1981. If approved by the Attorney General, the rules will become effective upon publication in the *State Register* in the manner provided in Minn. Stat. § 15.0412, subd. 4(f) (1980).

Dated this 17th of November, 1980.

Duane R. Harves
Chief Hearing Examiner

Rules as Proposed (all new material)

9 MCAR § 2.501 Scope and waiver of these rules.

A. Scope. These rules govern hearings between state agencies and citizens based on the Revenue Recapture Act, (Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minnesota Statutes, §§ 270A.01 to 270A.12 (1980)). In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

B. Waiver and modification. Upon request of all parties, the hearing examiner shall waive or modify any of these rules.

9 MCAR § 2.502 Definitions.

A. Agency, claimant agency: Agency or claimant agency means the state or agency asserting a claim to a tax refund.

B. Debtor: Debtor means a natural person whose tax refund is the subject of a claim by the claimant agency.

C. Party: Party means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to 9 MCAR § 2.506 of these rules.

D. Service, serve: Service or serve may be accomplished by either:

1. Delivering a document to an individual in person or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution; or,

2. Mailing the document to the person by first class United States mail. Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the State of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

9 MCAR § 2.503 Initiating a hearing.

A. Request for assignment. Any agency desiring to order a hearing shall first contact the Chief Hearing Examiner or his

designee and request the assignment of an examiner. The request shall include a proposed date, time and place for the hearing. If requested by the Chief Hearing Examiner or his designee, the agency shall file a copy of the Notice of Hearing proposed to be issued.

B. Assignment. Within ten days of the receipt of a request, the Chief Hearing Examiner or his designee shall assign an examiner to hear the case. Unless the Chief Hearing Examiner or his designee have already agreed with the agency, the examiner shall advise the agency as to the location, date and time for the hearing. In offering such advice, the examiner shall consider the location of known parties, witnesses and other participants so as to maximize convenience and minimize cost. After reaching agreement with the Chief Hearing Examiner or his designee or upon receiving advice from the examiner, the agency shall issue the Notice of Hearing.

9 MCAR § 2.504 The Notice of Hearing.

A. The Notice of Hearing shall be served at least 20 days before the hearing.

B. Content of notice. The Notice of Hearing shall be served upon all parties. The notice shall be worded in clear, nontechnical language and shall contain, at a minimum, the following:

1. The time, date and place for the hearing.

2. The name, address and telephone number of the hearing examiner.

3. A statement of the allegations or issues to be determined at the hearing, together with a citation to any relevant statutes and rules. If the debt arises from more than one event or transaction, each event or transaction shall be noted.

4. A citation to the statutory authority to hold the hearing and to take the action proposed.

5. A citation to these rules, and notification of how copies may be obtained.

6. A brief description of the procedure to be followed at the hearing.

7. The name, address and telephone number of the agency representative to be contacted to discuss informal disposition of the dispute, along with an explanation of the types of informal disposition which the agency might consider.

8. Notification that a party need not be represented by an attorney but may choose to be represented by an attorney or any other person of their choice.

9. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position. In addition, a statement that subpoenas may be available to compel the attendance of witnesses or the production of documents and a reference to the rule relating to subpoenas, 9 MCAR § 2.509.

10. A statement advising parties that failure to appear at the hearing will result in the allegations of the Notice being taken as true, and a statement which explains the possible results if the allegations are taken as true.

9 MCAR § 2.505 Default.

A. A default occurs when a party fails to appear at a hearing.

B. If the claimant agency appears at a hearing but the debtor does not, the allegations in the Notice of Hearing shall be taken as true and deemed proved without further evidence. If the debtor appears at a hearing, but the claimant agency fails to appear, the examiner shall recommend that the hearing be dismissed with prejudice. If neither the claimant party nor the debtor appear at a hearing, the examiner shall recommend that the case be dismissed with prejudice.

9 MCAR § 2.506. Additional parties — intervention.

A. Petition. Any person not named in the Notice of Hearing who desires to participate as a party shall submit a timely written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. Timeliness will be determined by the examiner in each case based on circumstances at the time of filing. The petition shall show (1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding, (2) shall set forth the grounds and purposes for which intervention is sought, and (3) shall indicate petitioner's statutory right to intervene if one should exist.

B. Objection. Any party may object to the petition for intervention by filing a written Notice of Objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The Notice shall state the party's reasons for objection and a copy shall be served upon all parties, the person petitioning to intervene and the agency. If there is

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insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

C. Order. The examiner shall allow intervention upon a proper showing pursuant to paragraph A. above unless the examiner finds that the Petitioner's interest is adequately represented by one or more other parties participating in the case.

9 MCAR § 2.507 Prehearing procedures.

A. Prehearing conference. If the amount in controversy in any case exceeds $1,000 upon the request of any party or upon his/her own motion, the examiner may hold a prehearing conference prior to the hearing.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's Notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing.

2. Procedure. A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

B. Prehearing motions. If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

9 MCAR § 2.508 Prehearing discovery.

A party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing. The demand shall be in writing and shall be directed to the party or his/her attorney. Responses to the demand shall be served within ten days of receipt of the demand. Any witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Any party unreasonably failing, upon demand, to make such disclosure shall be foreclosed from presenting any evidence at the hearing through an undisclosed witness.

9 MCAR § 2.509 Subpoenas.

A. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate:

1. The name and address of the person upon whom the subpoena will be served;

2. A brief statement of the potential relevance of the testimony or documents sought;

3. If the subpoena request is for the production of documents, the documents sought should be identified with specificity.

B. Service of subpoenas. Subpoenas shall be served personally in the manner provided in 9 MCAR § 2.502 D.1. They shall not be served by mail. The fees provided for service of subpoenas in the District Courts by Minn. Stat. § 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are $10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place of attendance, to be estimated from the witness' residence.

C. Objection to a subpoena. Any person served with a subpoena who has an objection to it may file an objection with the examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers or other tangible things.

9 MCAR § 2.510 Changes in date, time or place.

A. Requests. Any party who desires to change the date, time or place from that announced in the Notice of Hearing shall contact the other known parties, or their representatives, and seek agreement regarding a new time, date or place. If the parties can agree, and if the examiner's schedule allows, the examiner shall approve the change.

B. Notice. If time permits, the agency shall send a written notice to all parties and the examiner setting forth the new time, date or place.

C. Continuances during a hearing. If it appears in the interest of justice that further evidence should be received, the examiner shall continue the hearing to a future date. Oral notice on the record shall be sufficient notice of the additional date.

9 MCAR § 2.511 Hearing procedures.

A. Conduct of the hearing. The hearing shall be conducted substantially in the following manner:

1. The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency and briefly stating the facts as alleged in the Notice of Hearing which give rise to the claim.

2. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

3. The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

4. Testimony may be given in narrative fashion by witnesses rather than by question and answer format.

5. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

6. Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

7. A party may question an adverse party or any witness identified with an adverse party, by leading questions and contradict and impeach him/her on material matters.

8. When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under 9 MCAR § 2.410.

9 MCAR § 2.512 Rights and obligations of parties.

A. Be prepared. A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party.

B. Respond to orders from the examiner. If the examiner orders that parties do an act, or not do an act, the parties shall comply with the order. If a party objects to an order, such objection shall be stated in advance of the order as part of the record.

C. Right to receive copies. The examiner shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the examiner shall simultaneously send a copy to all other parties, provided, however, that this requirement shall not apply to requests for subpoenas.

D. Right to counsel and communication with represented party. A party need not be represented by an attorney. He/she may represent himself/herself, or may be represented by an attorney or any other person of his/her choice. If a party has notified other parties that he/she will be represented by an attorney, all communications shall be directed to that attorney.

9 MCAR § 2.513 Rights and obligations of non-parties.

A. Testify and offer evidence. Any person may offer testimony or other evidence relevant to the case. Any non-party offering testimony or other evidence may be questioned by parties to the proceeding.

B. Question witnesses. Generally, non-parties shall not be allowed to question witnesses, provided, however, that the examiner may allow such questioning if he/she deems it necessary for the development of a full and complete record.

9 MCAR § 2.514 Rights and obligations of the examiner.

A. Impartiality. An examiner assigned to a case shall be free of any personal, political or economic association that would impair his/her ability to function in a fair and objective manner. Should an examiner believe that he/she cannot comply with this rule, he/she shall withdraw from the case.

B. Communication with parties or others. The examiner shall not communicate, directly or indirectly, with any person or party concerning any issue of fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate. When these rules authorize communications contrary to this prohibition, such communications shall be limited to only those matters permitted by these rules.

C. Duties. Consistent with law and these rules, the examiner shall perform the following duties:

1. Receive, and recommend action to the Chief Hearing Examiner upon receipt of, requests for subpoenas.

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2. Hear and rule on motions.

3. Preside at the hearing.

4. Administer oaths and affirmations.

5. Grant or deny continuances.

6. Examine witnesses where deemed necessary to make a complete record.

7. Prepare findings of fact, conclusions and recommendations.

8. Make preliminary, interlocutory or other orders as deemed necessary to assure a fair hearing.

9. Recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons.

10. Do all things necessary and proper to the performance of the foregoing.

9 MCAR § 2.515 Rules of evidence.

A. General rules. The examiner shall admit all evidence which logically tends to prove or disprove an important fact, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

B. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the claimant agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

C. Documentary evidence. Documentary evidence may be introduced in the form of copies or excerpts or may be incorporated by reference into the record. Copies of a document shall be received to the same extent as the original document unless (1) a genuine question is raised as to the accuracy or authenticity of the copy or (2) in the circumstances, it would be unfair to admit the copy in lieu of the original.

D. Notice of facts. The examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

9 MCAR § 2.516 Burden and standard of proof. The claimant agency shall have the burden of proving the amount and existence of the debt and its right to collect the debt by a preponderance of the evidence. If the debtor asserts any affirmative defenses, the debtor shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

9 MCAR § 2.517 Timing of the decision. Following the close of the record, the examiner shall make his/her report pursuant to Minn. Stat. §§ 15.0412, subd. 4d, and 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties.

9 MCAR § 2.518 The record.

A. The examiner shall maintain the official record in each case until the issuance of the report, at which time the record (except for the audio-magnetic recordings thereof) shall be sent to the agency.

B. What the record shall contain. The record shall contain:

1. The Notice of Hearing and all motions and orders which have been reduced to writing;

2. Evidence received or considered;

3. An audio-magnetic recording of the hearing;

4. The examiner's report;

5. All memoranda or data submitted by any party in connection with the case;

6. The transcript of the hearing, if one was prepared.

C. The record of the contested case proceeding shall be closed upon the completion of the testimony, receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the parties and the examiner have agreed should be received into the record, whichever occurs latest.

D. The transcript. The audio-magnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' Account in the State Treasury.

9 MCAR § 2.519 Disruption of the hearing.

A. Cameras. Television, newsreel, motion picture, still or other cameras may be operated in the hearing room during the course of the hearing unless the examiner determines that such operation is disrupting the hearing.

B. Recordings. The official audio-magnetic recording of the hearing shall be made by the examiner. Any party may also record all or part of the proceedings. Non-parties may record all or part of the proceedings unless the examiner determines that such recording is disrupting the hearing. In the event of failure of recording equipment, the examiner may direct any person or party to provide the examiner with the original or a copy of any recording of the proceeding upon payment of the cost of the recording medium.

C. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

9 MCAR § 2.520 Rehearing. Any agency Notice of and Order for Rehearing shall be served on all parties in the same manner prescribed for the Notice of and Order for Hearing, provided that the examiner shall permit service of the Notice and Order for Rehearing less than 20 days prior to rehearing if the parties agree to such earlier service. The rehearing shall be conducted in the same manner prescribed for a hearing.

9 MCAR § 2.521 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

[Not to be Codified] Effectiveness. Five working days after final publication in the *State Register*, these rules shall be applied to all hearings to be commenced thereafter and commenced previously, but not yet completed, provided that for cases in progress, only those portions of the rules shall apply to the portion of the hearing process not yet completed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

OAH-81-001-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adoption of Rules Governing Revenue Recapture Act Hearings.

STATEMENT OF NEED and REASONABLENESS

Introduction

The Office of Administrative Hearings (hereinafter the "Office") proposes to adopt rules governing procedures for hearings held pursuant to the Revenue Recapture Act, Laws of Minnesota 1980, Chapter 607, Article XII, which is to be codified as Minn. Stat. §§ 270A.01 to 270A.12 (1980). The Office has determined that these proposed rules will be non-controversial and has chosen to proceed without a public hearing pursuant to the provisions of Laws of Minnesota 108, Chapter 615, § 7, to be codified as Minn. Stat. § 15.0412, subd. 4(g) (1980).

The proposed rules contain a complete set of procedures for the conduct of hearings to be held under the Revenue Recapture Act. That Act generally provides that if a person owes money to a state agency, or to a public agency responsible for child support enforcement, the claimant agency may request the Commissioner of Revenue to deduct the amount owed from any income tax refund or property tax credit or refund due to the debtor, and pay the amount so deducted to the claimant agency. The Act provides for notice to the debtor and, in most cases, an opportunity for a contested case hearing where the debtor may contest the validity of the claim and the deduction. The rules being proposed by the Office govern the procedures to be followed at such hearings.

Statutory Authority

The statutory authority for the Office to adopt these rules is contained in Minn. Stat. § 15.052, subd. 4 (1980), which provides in part, as follows:

> The chief hearing examiner shall promulgate rules to govern the procedural conduct of all hearings, relating to both rule adoption . . . and contested case hearings.

Rule-by-Rule Analysis

Proposed Rule 9 MCAR § 2.501 (hereinafter Rules will be referred to by only the last three digits of the full citation; this Rule would be proposed Rule 501) deals with scope and waiver of the rules.

Paragraph A., relating to scope, is needed to inform people that hearings under the Revenue Recapture Act (hereinafter "RRA") will be governed by a different set of procedures than other contested cases, and to inform persons that these rules can be used for other contested cases upon the agreement of all parties. It is reasonable because it clearly sets forth the scope of the rules, thus assisting persons to know when these rules must be used or are available for use.

Paragraph B. of Rule 501 relates to waiver. It is needed because there may be situations where it would either be desirable or necessary to waive or

modify any of the rules in order to adopt the rules to a particular circumstance. The Office anticipates, based upon discussions with the Department of Revenue, the Department of Public Welfare, the University of Minnesota, and other potential claimant agencies, that most of the claims filed under the Act will be for small amounts of money. However, the volume of claims could be very substantial, at least in the first few years. Should any substantial percentage of the claims require a hearing, there are bound to be numerous instances where the strict application of these rules would either work an undue hardship upon a taxpayer, or might even effectively preclude the opportunity for hearing. Therefore, there must be some provision for waiving or modifying these rules to accommodate the myriad unusual situations which are likely to develop in such a high-volume area.

The provision is reasonable because it requires all parties to agree to any waiver or modification. If one party objects, the rule prohibits any waiver or modification.

Proposed Rule 502 contains definitions. Paragraphs A., B., and C. are self-explanatory, and are needed to avoid any confusion about the meaning of a defined term when that term is used later in a substantive rule. They are reasonable because they include the persons or entities who are subject to the operation of the substantive rules.

Paragraph D., the definition of service, is necessary to avoid any question regarding the appropriate method of obtaining service when persons are attempting to serve the various documents, motions, and decisions called for in later substantive rules. The rule is reasonable because it includes both personal service and service by mail, both methods being likely to achieve the goal of actually notifying a person or getting a document into his or her hands. A third method of service, service by publication, was deemed to be unreasonable for use in connection with hearings under the Act, and thus was not included in this paragraph because it was far less likely to achieve the goals of actual service. The proposed rule on service by mail includes a permissive reference to the Central Mailing Section of the Department of Administration so that state agencies may use that service without expending time and effort to deposit documents in the U. S. mail. Past experience of the Office has indicated that this service is reliable.

Proposed Rule 503 relates to the initiation of a hearing. Paragraph A. deals with requests by claimant agencies for assignment of hearing examiners and is needed in order to set forth the appropriate procedure for scheduling a hearing examiner. It is reasonable because it comports with the existing practice within the Office (use of designee), as well as requiring only the minimum amount of information at this step in the process. The last sentence of the paragraph is needed because of the variety of different claimant agencies which might be using the Act, including many who have not had any previous experience with the Notice requirements of Minn. Stat. Ch. 15 (the Administrative Procedure Act). In order to avoid wasteful renoticing, the last sentence of the Rule enables the Chief Hearing Examiner, or his designee, to review the Notice of Hearing before it is issued. By making this requirement to file a copy of the Notice permissive, wastes of time and money can be avoided by not requiring delivery once an agency has developed an acceptable format for use.

Paragraph B. of the Rule is needed to set forth a time limit and a method of procedure for assignment of the hearing examiner. It is also needed to set standards for the hearing examiner's advice to the agency with regard to location of the hearing, a power which is contained in Minn. Stat. § 15.052, subd. 3 (1980). Paragraph B. is reasonable because ten days is a compromise between allowing the Office adequate time to schedule hearing examiners for multiple hearings in the same area (to avoid wastages of gasoline and time), and the need of agencies to issue the Notice of Hearing within the time period set forth in Minn. Stat. § 270A.09, subd. 1 (1980), which requires that a claimant agency must initiate a contested case hearing within 30 days after receipt of a debtor's request for a hearing . The provision setting forth standards for advising agencies with regard to location of hearings is reasonable because it embodies the obvious factors needed to achieve the goal set forth in the rule, which is "to maximize convenience and minimize cost". The final sentence is needed because it clarifies for claimant agencies the fact that the Notice should not issue until the location of the hearing has been agreed to. It is reasonable because it merely re-emphasizes the timing implicit in the earlier portions of the Rule.

Proposed Rule 504 deals with the Notice itself: When it must be served, and what it must contain. Paragraph A. states that it must be served at least 20 days before the hearing. The Act does not contain any minimum time period, nor does Minn. Stat. Chapter 15 (hereinafter the "APA"). The existing contested case rules of the Office require notice at least 30 days prior to hearing. Obviously, there must be some time limit set in order to avoid claims of inadequate notice, and that is why the rule is needed. Twenty days is reasonable because the claimant agency has control of the debtor's money. Hearings will only be held after a debtor indicates a desire for a hearing to contest the validity of the claim. In such a situation, it is appropriate to shorten the traditional period because the claimant agency will retain control of the debtor's money until the dispute is resolved. Should a debtor desire additional time to prepare for the hearing, a provision for a continuance is contained in Rule 510.

Paragraph B. relates to the content of the Notice. It is set out in "laundry list" fashion, listing ten items which must be included in any Notice of Hearing. It is needed in order to inform claimant agencies of what will be required in order for a Notice of Hearing to be sufficient. Its reasonableness can be best understood by reference to the philosophy underlying many of the rules proposed for adoption at this time. The basis for that philosophy is a document entitled "Practical Observations on the Small Claims Court," which was authored by Stephen Weller and John C. Ruhnka, and published by the National Center for State Courts in 1979. It is a manual of practical advice relating to the operation of small claims courts. It was based upon a nation-wide study of the operation of such courts, including the collection of data and court records and questionnaires directed to plaintiffs and defendants using small claims courts. The underlying study, published in 1978 by the National Center, is entitled "Small Claims Courts: A National Examination".

The philosophy of the proposed rule on the content of the Notice comes from a recommendation in the manual which provides that:

> The complaint should be worded in a way that is non-threatening to the defendant. Instructions to ensure that the defendant fully understands what is expected of him and how to obtain further help from the court should accompany the complaint.

In discussing this recommendation, the authors stated:

> Most complaint forms are worded in a way that is one-sided and potentially threatening to defendants. The entire tenor of the complaint is that the defendant is being hauled into court and that serious consequences will ensue if he does not appear to answer the complaint. An unsophisticated defendant reading such a complaint could easily feel that the court had already determined his liability.
>
> We recommend that small claims complaints be worded in a more even-handed way that is less threatening to defendants. It should be made clear to the defendant on the complaint itself that he may contest all or a part of the claim and that he will be given full opportunity to explain his side of the story to a judge. He should be made to feel that the court is there to help him as well as the plaintiff, and he should be encouraged to contact the court prior to trial if he has any questions.

In keeping with this philosophy, the Rule requires, in addition to the traditional items of Notice (date, time and place; Statement of Issues; etc.), such non-traditional items as a description of procedure to be followed at the hearing, advising parties to bring all documents, records, and witnesses to the hearing, etc. These are reasonable because it is anticipated that many debtors will be unrepresented in these proceedings because of the small amounts of money involved.

Rule 505 deals with default. It is needed in order to provide uniformity in the outcome of hearings where one or both parties default, and to put all persons on notice of those outcomes. It is reasonable because it provides a penalty (unfavorable outcome) to be assessed against that party which does not appear.

Rule 506 provides for intervention. Discussions with the Department of Revenue indicated that intervention might be necessary in some cases (such as husband and wife). The rule is needed to provide procedures for handling situations where a person, other than the debtor or the claimant agency, has an interest in the hearing. It is obviously desirable to have all parties with an interest in the outcome take part in one hearing, to avoid numerous separate proceedings, perhaps in different forums, involving the same claim. The rule is reasonable because the standards are similar to those found in the Office's existing contested case rules, which have proved workable over years of experience.

Rule 507 deals with prehearing procedures: Prehearing conferences and prehearing motions. With regard to prehearing conferences, the rule provides that they may be held if the amount in controversy exceeds $1,000. This figure was selected to assure that such conferences would not be abused in situations where their costs might become excessive in light of the amount in controversy in the case itself. It is believed that such a figure is reasonable based upon the Office's experience in other contested cases. Paragraph A.1. sets forth the purposes of such conferences, and is needed to provide an indication to parties as to what such conferences are intended to accomplish. It is reasonable because these are the types of matters which most commonly have been discussed at prehearing conferences in contested cases.

Paragraph A.2. provides for informal proceedings. It is necessary to indicate that the conference is not bound by formalities which might thwart its purpose. It is reasonable (if adhered to) because it should aid in achieving the goal of such conferences.

Paragraph B. of the rule deals with prehearing motions. It is necessary that some procedure be set forth in the rules so that parties desiring to make such motions will be able to do so properly. It is reasonable because it provides a format which is fair to all parties.

Proposed Rule 508 deals with prehearing discovery. It substantially limits the scope of such discovery. It is necessary that the rules set forth scope and procedures for discovery so that persons desiring to engage in it will know the appropriate subjects and methods to accomplish it. It is reasonable because it limits discovery to matters which should be easily responded to. This is important because it will avoid the costs of discovery getting out of proportion to the amount in controversy. If a case arises where broader discovery appears to be either needed or reasonable, the waiver provisions of Rule 501 B. can be employed if the parties agree.

Proposed Rule 509 deals with subpoenaes. It sets forth procedures and standards for subpoena request, service and objections. Authority to issue subpoenaes is contained in Minn. Stat. § 15.052, subd. 4 (1980), but it is necessary to have a rule setting forth the procedures and standards for subpoenaes. The rule is reasonable because it covers those problems which have arisen in connection with subpoenaes in the Office's past experience.

One deviation from the existing contested case rules of the Office appears in Rule 509 B., wherein the witness fees set forth in statute are actually contained in the rule. This is needed because of the numerous situations where persons will be proceeding in these hearings (and using subpoenaes) without benefit of counsel. Setting forth the fees in the rule will enable those persons to compute witness fees without having to gain access to the statutes in order to determine the fee.

Rule 510 relates to continuances, either of time or location. It provides standards and procedures which are designed to allow the parties to agree on continuances. It is necessary that the rules provide some guidance with regard to continuances because neither the statute nor these rules contemplate that the debtor will have any input into the selection of time or place of the hearing. The provision in Rule 510 C. for continuances to receive further evidence is believed necessary because litigants who are unfamiliar with court processes may need time to correct a mistake in preparing for hearing. It is similar to a recommendation in the Weller and Ruhnka manual which "strongly recommends" the inclusion of such a provision.

Rule 511 deals with conduct of the hearing and is a "laundry list" designed to inform participants of the order in which events will occur and the limitations on certain activities during the hearing. Although most of these explanations may be commonly understood by attorneys who might feel them unnecessary, they were inserted with a view to the unrepresented debtor or claimant agency representative. Perhaps the only unusual provision is found in Paragraph 4, which provides for narrative testimony rather than question and answer format. This was inserted based upon two recommendations contained in the Weller and Ruhnka manual. Both dealt with the participation of attorneys in small claims

trials. They essentially recommended that all questioning of witnesses be done by the judge, rather than attorneys. Under their proposals, the role of attorneys, if any, would be limited to a brief presentation at the close of a case. The Office does not believe that it has the power to exclude attorneys from participating in such hearings, nor is it sure that such exclusion would be desirable. (See the discussion under Rule 512 D). However, based upon the cited study, the Office has made a policy decision to experiment with narrative testimony rather than question and answer format in these hearings.

Proposed Rule 512 sets forth the rights and obligations of parties. It is divided into four paragraphs, only one of which can be found in the existing contested case rules of the Office. However, the other three are all implicit in contested cases conducted by the Office. They are set forth in these rules for the benefit of unrepresented debtors (or claimant agencies) who have not had experience in quasi-judicial administrative proceedings.

Rule 512 A. directs parties to be prepared for hearings and to make requests for subpoenas and other procedural matters within a reasonable time after their need becomes evident. These are needed because unrepresented parties without experience in such matters may not have thought through the fact that their hearing will be a "one-shot" affair and that it takes time to prepare and obtain subpoenas, etc. They are reasonable because they are the type of things which unrepresented parties need to be reminded of.

Paragraph B. merely informs the parties of their obligation to follow the orders of the examiner and to state their objection, on the record, prior to the entry of an order. This is needed to inform parties of the fact that once an order is issued, they must comply with it and that the appropriate time for objection is prior to the issuance of the order. It is reasonable because the efficient functioning of the administrative hearing process is based upon orderly compliance with decisions and stating of objections at such time when they can impact those decisions.

Paragraph C. merely states that the examiner, and parties, all have an obligation to send simultaneous copies to all parties to the hearing. It is necessary because unrepresented parties may not be aware of this requirement, and it is reasonable because it is important for all parties to be kept abreast of contacts with the examiner so that they may respond in a timely fashion.

Paragraph D. informs people that they have a right to counsel and that communications with a party should be made through an attorney if one has been retained. It is needed in order to inform persons of the fact that attorneys are permitted, but not required. The last sentence, regarding communications, is needed because unrepresented persons may not understand that communications in a case should be directed to an attorney. The paragraph is reasonable because it gives the parties the greatest possible degree of latitude with regard to representation and because it will prevent the possible harassment of parties who are represented, and assure that their attorney can advise them.

Proposed Rule 513 deals with the rights and obligations of non-parties.

Paragraph A., relating to testimony and the offering of other evidence, is needed because there may be situations where a non-party will have evidence relevant to the case, but does not wish to intervene. Provision for questioning by the parties is needed because it is ordinarily the parties whose rights are most often affected by the outcome, and thus, they should have a right to

ask clarifying questions of all witnesses. The provisions of Paragraph B., generally prohibiting non-parties from questioning witnesses, are needed to alert persons that, should they desire to question witnesses, they ought to intervene. They are reasonable because there may be situations where persons might desire (for motivations having nothing to do with the expeditious conduct of a hearing) to question witnesses. This should not be allowed to occur, and if persons have valid reasons for questioning witnesses, they can either ask the parties to waive this requirement or they may petition to intervene. Finally, the examiner is permitted to allow such questions if necessary for the development of a full and complete record. This is needed to cover unusual situations where the examiner believes that the non-party may have certain information which uniquely enables him or her to question witnesses, and such questioning is necessary in order to develop a full and complete record. It is reasonable to place such discretion (limited by the standard contained in the rule) in the examiner because he or she is the person best able to make that judgment.

Proposed Rule 514 relates to rights and obligations of the examiner and is taken practically verbatim from various portions of the existing contested case rules of the Office.

Paragraph A. deals with impartiality and places burden of determining bias upon the examiner, requiring withdrawal if he or she could not function in a fair and objective manner. It is needed to remind examiners of their responsibilities and to assure the public that these potential problems have not been overlooked. It is reasonable because, by placing the burden on the examiner, it will assure that even if the parties are unaware of any bias, the examiner will withdraw from the case if bias is present.

Paragraph B. relates to communications with parties or others and prohibits ex parte communications on "any issue of fact or law relevant to a pending case". It is needed to alert both parties and the examiner to requirement that there be no ex parte communications on such matters. The exception in the last sentence is needed because these rules have been drafted with a view toward procedural information being provided to unrepresented persons by the examiner. However, such communications must be limited to answering procedural questions and not giving advice on substantive issues which will ultimately have to be decided by the examiner. The paragraph, as a whole, is reasonable because it creates a standard which will ensure all parties an equal opportunity to participate in any off the record discussions on substantive issues.

Paragraph C. is a laundry list of duties to be performed by the examiner. There are no provisions contained therein which are not a part of the existing contested case rules of the Office. It is needed in order to eliminate any questions regarding the examiner's authority to take actions throughout the hearing process. While attorneys may not question the authority for such actions, unrepresented parties might, and therefore, the paragraph should eliminate any doubt as to authority. It is reasonable because all of the enumerated items are items which are likely to occur in the conduct of contested cases contemplated under the Act.

Proposed Rule 515 contains the rules of evidence which will be applicable in proceedings under the Act.

Paragraph A. was adapted from the existing rules of the Office, but was modified to make it more understandable by non-attorneys. It is particularly necessary that the rules contain the standard for evidence so that persons will know, in advance, what kinds of evidence they can use to prove or disprove the facts at issue. It is reasonable because it sets forth a standard which has been held to be appropriate for administrative proceedings by the courts of this state and others.

Paragraph B. is needed to make it clear to all parties that in order for evidence to be considered in the decision, it must be offered into the record. Neither the examiner nor the agency can rely upon marterial which was not in the record (with one exception which will be discussed later). It is reasonable because the requirement that evidence must be in the record in order to be considered is basic to the functioning of the hearing process, including a perception on the part of all parties that they are being given a full and fair hearing.

Paragraph C. provides that copies will be accepted in place of originals unless certain conditions require the use of an original. It also provides for incorporation by reference of documents into the record. It is needed to avoid any question regarding the admissibility of copies and to provide a standard for examiners to use in determining when copies would not be acceptable. It is reasonable because it recognizes that modern-day document storage and photocopying capabilities often it make it impractical (and in some cases, impossible) to obtain an original document.

Paragraph D. is taken directly from the Office's existing contested case rules. It is needed to assure that there is no question over the concept of judicial notice, and to ensure that the protections afforded by the rule are granted to the parties. It is reasonable because it does provide protection to the parties, as well as limiting the types of facts which may be subject to judicial notice.

Proposed Rule 516 is an attempt to clarify two issues which are somewhat clouded in the Office's existing contested case rules. It both informs persons of which party bears the burden of proof, and contains a standard of proof. It is important that parties, particularly unrepresented ones, understand these concepts prior to the hearing because they may affect the conduct and outcome of the hearing. In addition, stating these in advance will avoid any debate at the time of the hearing regarding such issues (in particular, questions regarding the burden have caused debate in the past). They are reasonable because it is appropriate for the claimant agency to have to prove its right to keep the money otherwise belonging to the debtor, and that the debtor prove up any alleged affirmative defenses. It is reasonable that a preponderance test be used for the burden because it is the test that the office does apply in most contested cases. There is no reason to apply any stricter burden to hearings under the Act.

Proposed Rule 517 deals with timing of the decision and requires a written report. The Office had entertained the notion of using oral findings because the Weller and Ruhnka work recommended announcing judgments at trial, with certain exceptions. However, it is impossible for the Office to follow that recommendation because the applicable statutes require a written report. The rule is intentionally silent with regard to prohibiting or requiring the examiner to

orally indicate what the results will be. The rule is needed to inform persons of the procedure to be followed in connection with the decision, and is reasonable because it follows the procedure required by statute.

Proposed 518 deals with the record. Paragraph A. requires the examiner to maintain the official record until the issuance of the report, at which time it is sent to the agency. The rule is needed to clarify any questions regarding who maintains the record, and when the record is returned to the agency. It is reasonable because it reflects the statutory scheme contained in Minn. Stat. § 15.0418, subd. 2 (1980), which provides that subsequent to the assignment of the case, the Office shall maintain the official record until the examiner has issued the report, at which time it shall be certified back to the agency.

Paragraph B. is a laundry list of what items must be included within the official record. It is needed to set a standard in order that there be no dispute over what is in the record and what is not. It is reasonable because it includes all materials which are necessary for the agency to make its final decision and for a reviewing court to review the record should there be an appeal.

Paragraph C. provides for the closing of the record. It is needed because there must be a specified point dividing material which will be considered by the examiner (and by the agency) from that material which will not be considered. It is reasonable because it provides for the various contingencies which have arisen in the past (such as the need for submission of late-filed exhibits), while still setting a clear standard so that all participants know when the record will close.

Paragraph D. relates to transcripts. It is needed to inform persons that transcripts will not be prepared in all hearings and that it is necessary to request a transcript (and pay a charge therefor) in order to get one. It also is necessary to authorize the Chief Hearing Examiner to order the preparation of a transcript in those rare cases where the parties do not do so but it is deemed to essential for the preparation of the examiner's report. It is reasonable that the Chief Hearing Examiner have this power because there are rare cases where an examiner concludes that it would be extremely difficult, and possibly damaging to the quality of his or her report, if no transcript were available. It is reasonable to require a party requesting a copy of the transcript to bear the fees therefor because of the costs involved in the preparation of transcripts. In light of the anticipated volume of hearings (at least in the first few years), if a transcript were to be prepared in every case and furnished at no cost (or just at ordinary copying costs) to the parties, the Office would be required to hire several additional persons and purchase additional equipment. The final sentence merely empowers the Chief Hearing Examiner to set charges (it is necessary that somebody do so, and it is reasonable that he do so because he is the one most aware of the actual costs incurred in preparation of the transcript) and designates where money should be deposited consistent with Minn. Stat. § 15.052, subd. 7 (1980).

Proposed Rule 519 deals with cameras and recorders. Paragraph A., relating to cameras, is cast so as to permit them unless the examiner determines that their operation is disrupting the hearing. In the past, questions have arisen regarding the access of newscameras to contested case hearings. It is necessary that there be a rule to answer these questions. This rule is reasonable

because the traditional arguments against the operation of such cameras have been substantially weakened by modern technology, which now permits most cameras to be operated without their operation disrupting the hearing process. A policy decision has been made to experiment with the use of cameras in the context of these hearings. The Office is well aware, however, of the ongoing debate regarding cameras in the courtrooms. It has taken the arguments on both sides of that debate into account in reaching this decision. It is believed that the safeguard embodied in the last phrase of the paragraph should be adequate to deal with situations which may arise where the operation of cameras is disrupting the hearing.

Paragraph B., dealing with recordings, also recasts an existing contested case rule to experiment with the use of recordings to a greater degree than previously allowed. The first sentence is needed to remove any doubt regarding which recording is official, and it is reasonable because the examiner (who will generally have more sophisticated equipment than other parties) is the person who controls the record. The second sentence, permitting any party to also record the proceedings, is needed because the office desires to dispel any doubts regarding the records of hearings (believing that such doubts are more likely to arise in these hearings when persons are more likely to be unrepresented). Thus, this rule is needed and reasonable in light of this goal. A similar recasting of the existing rule is made with regard to the recording of the proceedings by non-parties, except that a proviso has been added to permit the examiner to prohibit such recording if it disrupts the hearing. This rule is both needed and reasonable because there is an inherent difference between a party and a non-party with regard to recording the hearing. Some disruption from parties (anticipated to be in the form of brief delays) is acceptable when balanced against the desire to have parties be assured of the validity of the official record. Such concerns are not present, however, in the case of non-parties. Nonetheless, the Office sees no reason to prohibit non-parties from recording proceedings so long as there is no disruption. The final sentence is designed to minimize the impact of failures of the examiner's recording equipment. While they have been remarkably rare, such failures have occurred. If someone else is making an adequate recording of the proceedings, there is no reason why the hearing should have to stop while the examiner's equipment is repaired or replaced. If the examiner knows that the record is being maintained through the recording of another person, and knows that he or she can gain access to that recording, then the hearing may continue. It is, of course, reasonable that the Office pay for the cost of a copy of that other person's recording.

Paragraph C. is included both in the existing contested case rules of the Office and in these rules because occasionally, persons will intentionally disrupt hearings. At a recent seminar on citizen participation in administrative hearings, a community organizer discussed situations where, in his opinion, disruption might be appropriate. The language contained in the rule is taken from the cited statute in order that all persons who might contemplate such action understand that it is prohibited not only by rule, but also by law. It is reasonable to have this in the rules, even though it is in the statute, because far more people are apt to have access to these rules than would have access to the statute. In addition, all parties at the hearing are likely to

have a copy of the rules with them, although it would be very unlikely that any of them would have a copy of the statute. Because the Office views disruption very seriously and because it is important that the examiner and potential disrupters know precisely what is prohibited, duplication of the statutory language is deemed to be crucial to the ability of affected persons to comprehend its meaning and effect.

Proposed Rule 520 deals with rehearings. While it is not anticipated that there would be many rehearings under the Act, it is appropriate to have such a rule so that when one does occur, both the examiner and the parties know how to proceed. The provision permitting parties to agree to short notice on rehearing is deemed needed and reasonable because the parties will know who is going to be involved in the hearing and what the issues will be. However, any party may object to such short notice, in which case the normal 20-day period is required.

Proposed Rule 521 deals with severability. It is needed to ensure that as many of the rules as possible can be made effective in a timely manner and that persons know that this will occur. The rules have been designed to be as independent of one another as possible.

The final rule, which is not to be codified, deals with effectiveness and merely states when the rules will be effective and the impact of effectiveness upon cases in progress. It is needed to inform persons interested in these rules, and particularly, to inform parties to cases in progress, as to how the rules should be applied. It is reasonable to assure uniformity for hearings in progress.



DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : TO WHOMEVER IT MAY CONCERN

DATE: 1-8-81

FROM : ALLAN W. KLEIN
Hearing Examiner

Allan W. Klein

PHONE: 6-8104

SUBJECT: Lack of Notice of Submission to Attorney General; Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings.

No person indicated, in any way, that they desired to be notified of the submission of these rules to the Attorney General. In fact, no person submitted any comments or suggestions in connection with these rules, nor did any person request that a public hearing be held. Therefore, the Office has not notified any person of the submission of these Rules to the Attorney General because no person requested that they be given such notice.

AWK/eag

Adopted Rules copy

OFFICE OF ADMINISTRATIVE HEARINGS

Rules as Proposed Governing Revenue Recapture Act Hearings

9 MCAR § 2.501 Scope and waiver of these rules

A. Scope. These rules govern hearings between state agencies and ~~citizens~~ taxpayers based on the Revenue Recapture Act, (Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minnesota Statutes, Sections 270A.01 to 270A.12 (1980)). In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a pro- ceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

B. Waiver and modification. Upon request of all parties, the hearing examiner shall waive or modify any of these rules.

9 MCAR § 2.502 Definitions.

A. Agency, claimant agency: Agency or claimant agency means the state or public agency asserting a claim to a tax refund.

B. Debtor: Debtor means a natural person whose tax refund is the subject of a claim by the claimant agency.

C. Party: Party means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to 9 MCAR § 2.506 of these rules.

D. Service, serve: Service or serve may be accomplished by either:

1. Delivering a document to an individual in person or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution; or,

2. Mailing the document to the person by first class United States mail. Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the State of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

9 MCAR § 2.503 Initiating a hearing.

A. Request for assignment. Any agency desiring to order a hearing shall first contact the Chief Hearing Examiner or his designee and request the assignment of an examiner. The request shall include a proposed date, time and place for the hearing. If requested by the Chief Hearing Examiner or his des-

ignee, the agency shall file a copy of the Notice of Hearing proposed to be issued.

B. Assignment. Within ten days of the receipt of a request, the Chief Hearing Examiner or his designee shall assign an examiner to hear the case. Unless the Chief Hearing Examiner or his designee have already agreed with the agency, the examiner shall advise the agency as to the location, date and time for the hearing. In offering such advice, the examiner shall consider the location of known parties, witnesses and other participants so as to maximize convenience and minimize cost. After reaching agreement with the Chief Hearing Examiner or his designee or upon receiving advice from the examiner, the agency shall issue the Notice of Hearing.

9 MCAR § 2.504 The Notice of Hearing.

A. The Notice of Hearing shall be served at least 20 days before the hearing.

B. Content of notice. The Notice of Hearing shall be served upon all parties. The notice shall be worded in clear, nontechnical language and shall contain, at a minimum, the following:

1. The time, date and place for the hearing.

2. The name, address and telephone number of the hearing examiner.

3. A statement of the allegations or issues to be determined at the hearing, together with a citation to any relevant statutes and rules. If the debt arises from more than one event or transaction, each event or transaction shall be noted.

4. A citation to the statutory authority to hold the hearing and to take the action proposed.

5. A citation to these rules, and notification of how copies may be obtained.

6. A brief description of the procedure to be followed at the hearing.

7. The name, address and telephone number of the agency representative to be contacted to discuss informal disposition of the dispute, along with an explanation of the types of informal disposition which the agency might consider.

8. Notification that a party need not be represented by an attorney but may choose to be represented by an attorney or any other person of their choice.

9. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position. In addition, a statement that subpoenas may be available to compel the attendance of

witnesses or the production of documents and a reference to the rule relating to subpoenas, 9 MCAR § 2.509.

10. A statement advising parties that failure to appear at the hearing will result in the allegations of the Notice being taken as true, and a statement which explains the possible results if the allegations are taken as true.

9 MCAR § 2.505 Default.

A. A default occurs when a party fails to appear at a hearing.

B. If the claimant agency appears at a hearing but the debtor does not, the allegations in the Notice of Hearing shall be taken as true and deemed proved without further evidence. If the debtor appears at a hearing, but the claimant agency fails to appear, the examiner shall recommend that the hearing be dismissed with prejudice. If neither the claimant party nor the debtor appear at a hearing, the examiner shall recommend that the case be dismissed with prejudice.

9 MCAR § 2.506. Additional parties - intervention.

A. Petition. Any person not named in the Notice of Hearing who desires to participate as a party shall submit a timely written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. Timeliness will be determined by the examiner in each case based on circumstances at the time of filing. The petition shall show (1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding, (2) shall set forth the grounds and purposes for which intervention is sought, and (3) shall indicate petitioner's statutory right to intervene if one should exist.

B. Objection. Any party may object to the petition for intervention by filing a written Notice of Objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The Notice shall state the party's reasons for objection and a copy shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

C. Order. The examiner shall allow intervention upon a proper showing pursuant to paragraph A. above unless the examiner finds that the Petitioner's interest is adequately represented by one or more other parties participating in the case.

9 MCAR § 2.507. Prehearing procedures.

A. Prehearing conference. ~~If the amount in controversy in any case exceeds $1,000~~ Upon the request of any party or upon his/her own motion, the examiner ~~may~~ shall hold a prehearing conference prior to the hearing if the

amount in controversy in any case exceeds $1,000.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's Notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing.

2. Procedure. A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

B. Prehearing motions. If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

9 MCAR § 2.508. Prehearing discovery.

A party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing. The demand shall be in writing and shall be directed to the party or his/her attorney. Responses to the demand shall be served within ten days of receipt of the demand. Any witnesses unknown at the time of the disclosure shall be

disclosed as soon as they become known. Any party unreasonably failing, upon demand, to make such disclosure shall be foreclosed from presenting any evidence at the hearing through an undisclosed witness.

9 MCAR § 2.509. Subpoenas.

A. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate:

1. The name and address of the person upon whom the subpoena will be served;

2. A brief statement of the potential relevance of the testimony or documents sought;

3. If the subpoena request is for the production of documents, the documents sought should be identified with specificity.

B. Service of subpoenas. Subpoenas shall be served personally in the manner provided in 9 MCAR § 2.502 D.1. They shall not be served by mail. The fees provided for service of subpoenas in the District Courts by Minn. Stat. § 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are $10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place of attendance, to be estimated from the witness' residence.

C. Objection to a subpoena. Any person served with a subpoena who has an objection to it may file an objection with the examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive. Modification may include requiring the party requesting the subpoena to pay reasonable costs of produc-

ing documents, books, papers or other tangible things.

9 MCAR § 2.510. Changes in date, time or place.

A. Requests. Any party who desires to change the date, time or place from that announced in the Notice of Hearing shall contact the other known parties, or their representatives, and seek agreement regarding a new time, date or place. If the parties can agree, and if the examiner's schedule allows, the examiner shall approve the change.

B. Notice. If time permits, the agency shall send a written notice to all parties and the examiner setting forth the new time, date or place.

C. Continuances during a hearing. If it appears in the interest of justice that further evidence should be received, the examiner shall continue the

hearing to a future date. Oral notice on the record shall be sufficient notice of the additional date.

9 MCAR § 2.511. ~~Hearing Procedures~~ Conduct of the Hearing.

~~A. Conduct of the hearing~~. The hearing shall be conducted substantially in the following manner:

~~1~~A. The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency and briefly stating the facts as alleged in the Notice of Hearing which give rise to the claim.

~~2~~B. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

~~3~~C. The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

than by question and answer format.

~~5~~E. Cross-Examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

~~6~~F. Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

~~7~~G. A party may question an adverse party or any witness identified with an adverse party, by leading questions and contradict and impeach him/her on material matters.

~~8~~H. When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under 9 MCAR § 2.~~410~~ 510.

9 MCAR § 2.512. Rights and obligations of parties.

A. Be prepared. A party shall have all evidence to be presented, both oral and written, available on the date set for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party.

B. Respond to orders from the examiner. If the examiner orders that parties do an act, or not do an act, the parties shall comply with the order. If a party objects to an order, such objection shall be stated in advance of the order as part of the record.

C. Right to receive copies. The examiner shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the examiner shall simultaneously send a copy to all other parties, provided, however, that this requirement shall not apply to requests for subpoenas.

D. Right to counsel and communication with represented party. A party need not be represented by an attorney. He/she may represent himself/herself, or may be represented by an attorney or any other person of his/her choice. If a party has notified other parties that he/she will be represented by an attorney, all communications shall be directed to that attorney.

9 MCAR § 2.513. Rights and obligations of non-parties.

A. Testify and offer evidence. Any person may offer testimony or other evidence relevant to the case. Any non-party offering testimony or other evidence may be questioned by parties to the proceeding.

B. Question witnesses. Generally, non-parties shall not be allowed to question witnesses, provided, however, that the examiner may allow such questioning if he/she deems it necessary for the development of a full and complete record.

9 MCAR § 2.514. Rights and obligations of the examiner.

A. Impartiality. An examiner assigned to a case shall be free of any personal, political or economic association that would impair his/her ability to function in a fair and objective manner. Should an examiner believe that he/she cannot comply with this rule, he/she shall withdraw from the case.

B. Communication with parties or others. The examiner shall not communicate, directly or indirectly, with any person or party concerning any issue of

fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate. When these rules authorize communications contrary to this prohibition, such communications shall be limited to only those matters permitted by these rules.

C. Duties. Consistent with law and these rules, the examiner shall perform the following duties:

1. Receive, and recommend action to the Chief Hearing Examiner upon receipt of, requests for subpoenas.

2. Hear and rule on motions.

3. Preside at the hearing.

4. Administer oaths and affirmations.

5. Grant or deny continuances.

6. Examine witnesses where deemed necessary to make a complete record.

7. Prepare findings of fact, conclusions and recommendations.

8. Make preliminary, interlocutory or other orders as deemed necessary to assure a fair hearing.

9. Recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons.

10. Do all things necessary and proper to the performance of the foregoing.

9 MCAR § 2.515. Rules of evidence.

A. General rules. The examiner shall admit all evidence which logically tends to prove or disprove an important fact, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The examiner shall give effect to the

rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

B. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the claimant agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

C. Documentary evidence. Documentary evidence may be introduced in the form of copies or excerpts or may be incorporated by reference into the record. Copies of a document shall be received to the same extent as the original

document unless (1) a genuine question is raised as to the accuracy or authenticity of the copy or (2) in the circumstances, it would be unfair to admit the copy in lieu of the original.

D. Notice of facts. The examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

9 MCAR § 2.516. Burden and standard of proof. The claimant agency shall have the burden of proving the amount and existence of the debt and its right to collect the debt by a preponderance of the evidence. If the debtor asserts any affirmative defenses, the debtor shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

9 MCAR § 2.517. Timing of the decision. Following the close of the record, the examiner shall make his/her report pursuant to Minn. Stat. §§ 15.0412, subd. 4d, and 15.052, subd. 3, and, upon completion, a copy of said report

shall be served upon all parties.

9 MCAR § 2.518. The record.

A. The examiner shall maintain the official record in each case until the issuance of the report, at which time the record (except for the audio-magnetic recordings thereof) shall be sent to the agency.

B. What the record shall contain. The record shall contain:

1. The Notice of Hearing and all motions and orders which have been reduced to writing;

2. Evidence received or considered;

3. An audio-magnetic recording of the hearing;

4. The examiner's report;

5. All memoranda or data submitted by any party in connection with the case;

6. The transcript of the hearing, if one was prepared.

C. The record of the contested case proceeding shall be closed upon the completion of the testimony, receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the parties and the examiner have agreed should be received into the record, whichever occurs latest.

D. The transcript. The audio-magnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' Account in the State Treasury.

9 MCAR § 2.519. Disruption of the hearing.

A. Cameras. Television, newsreel, motion picture, still or other cameras may be operated in the hearing room during the course of the hearing unless the examiner determines that such operation is disrupting the hearing.

B. Recordings. The official audio-magnetic recording of the hearing shall be made by the examiner. Any party may also record all or part of the proceedings. Non-parties may record all or part of the proceedings unless the examiner deatermines that such recording is disrupting the hearing. In the event of failure of recording equipment, the examiner may direct any person or party to provide the examiner with the original or a copy of any recording of the proceeding upon payment of the cost of the recording medium.

C. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

9 MCAR § 2.520. Rehearing. Any agency Notice of and Order for Rehearing shall be served on all parties in the same manner prescribed for the Notice of and Order for Hearing, provided that the examiner shall permit service of the Notice and Order for Rehearing less than 20 days prior to rehearing if the parties agree to such earlier service. The rehearing shall be conducted in the same manner prescribed for a hearing.

9 MCAR § 2.521. Severability. If any provision of these rules is held inval-

id, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

[Not to be Codified] Effectiveness. Five working days after final publication in the State Register, these rules shall be applied to all hearings to be commenced thereafter and commenced previously, but not yet completed, provided that for cases in progress, only those portions of the rules shall apply to the portion of the hearing process not yet completed.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of
Procedural Rules Governing Revenue Recapture
Act Hearings.

ORDER ADOPTING RULES

Notice of the intent of the Chief Hearing Examiner to adopt the above-entitled rules without a public hearing was published in the State Register on December 1, 1980, and was sent by United States mail to all persons on the list maintained by the Office pursuant to Minn. Stat. § 15.0412, subd. 4, on December 1, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after notice, receiving no requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and resonableness of the proposed rules,

NOW, THEREFORE, IT IS HEREBY ORDERED that these rules identified as Procedural Rules Governing Revenue Recapture Act Hearings are adopted this 9th day of January, 1981, pursuant to the authority vested in me by Minnesota Statutes, § 15.052.

STATE OF MINNESOTA

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

In the Matter of the Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

ALLAN W. KLEIN, being first duly sworn, deposes and says:

That on the 1st day of December, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States mail at said City of St Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Office of Administrative Hearings for the purpose of receiving notice of the proposed adoption of rules by this Office.

Allan W. Klein

ALLAN W. KLEIN

Subscribed and sworn to before me this 9th day of January, 1981

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Procedural Rules Governing Revenue Recapture
Act Hearings.

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Office of Administrative Hearings for the purpose of receiving notice of the proposed adoption of rules by this Office is accurate and complete as of 12:00 noon on the 1st day of December, 1980.

Nancy M Thomas
NANCY M. THOMAS

Subscribed and sworn to before me this
9th day of January, 1981.
Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Procedural Rules Governing Revenue Recapture Act Hearings.

FINDINGS OF FACT and CONCLUSIONS

The Office of Administrative Hearings is proposing to adopt these rules without a public hearing, pursuant to the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980). No person requested that a public hearing be held, nor did any person submit any comments or suggestions for changes in the rule as proposed.

The Office is proposing, however, to make a number of changes in the rule as published in order to correct technical errors and, in one case, clarify the meaning of a rule. These changes are based upon the following:

1. That it is needed and reasonable to substitute the word "taxpayers" for the word "citizens" in 9 MCAR § 2.501 A. because it is possible that hearings could be held under the Act involving non-resident taxpayers or persons who have not yet been restored to full citizenship after having been deprived of their civil rights by reason of conviction of a crime or otherwise. The word "taxpayers" will encompass a more relevant group than the word "citizens." p.1

2. That the word "public" is inserted in 9 MCAR § 2.502 A. in order to correct a typographical omission. "Public agencies" are, in fact, going to be the largest users of the Revenue Recapture Act because they include county child support enforcement agencies. p.1

3. The first sentence of 9 MCAR § 2.507 is re-structured to effectuate two changes. The first change is to move the clause "if the amount in controversy in any case exceeds $1,000" to the end of the sentence to more clearly convey the office's original intention, which was that prehearing conferences could be held only in cases involving at least $1,000. This was the effect of the rule as published, but such effect could be gleaned only after analysis of the sentence structure and punctuation. Obviously, the office does not want to create any uncertainties nor rely unduly on technicalities of sentence structure. Therefore, the sentence has been restructured to make it clearer that the $1,000 limit applies to all cases. p.5.

The second change in that sentence is to substitute the word "shall" for the word "may". Again, the rule as originally published would appear to imply the mandatory "shall" because of the standards in the rule, but to avoid any difficulties over the use of the word "may", it has been eliminated and replaced by the mandatory "shall.". p.5

4. That there was a technical error in the drafting of 9 MCAR § 2.511 in that there was a subparagraph A, but no other subparagraphs. In such a case, there is no reason to have a subparagraph A, and the change to this rule merely eliminates the citation. In addition, the title of the rule is changed, and paragraphs 1 through 8 have been relettered to paragraphs A to H. p.8,9

5. That the final change to these rules arises out of a drafting error. In 9 MCAR § 2.511 A.8. (now H.), there is a reference to "9 MCAR § 2.410." The appropriate reference should be "9 MCAR § 2.510." All of these rules were assigned numbers in the 400 series during initial drafts, but it was later discovered that p.9

the 400 series is presently in use for another set of rules, so it was necessary to change all of the numbers for these rules to the 500 series. This reference was inadvertently left unchanged, and the change to 2.510 is merely a correction of that error.

STATE OF MINNESOTA

Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE-MAKING PROCEDURES

I, Assistant Attorney General J. Michael Miles, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule-Making Procedures has been followed. Any exceptions are noted below.

J. MICHAEL MILES
Assistant Attorney General

Dated: 1/12/81