

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1019

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-9-84 5-2 Adopted w/a hearing ____
DATE FOR REVIEW 4-18-84 Adopted w/o hearing ✓
DATE DUE 4-23-84 5-16 Temporary rule ____

Approved May 8, 1984 Disapproved 4/23/84 Returned to Agency ____

Resubmitted 5-2-84 Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 5-9-84 Revisor approved 4/9/84 disapproved ____

✓ ✓ Rule as Adopted

✓ Rule as Proposed

✓ ✓ Order Adopting 5. 1. 84 3.30.84 Date

____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

____ Agency's Findings of Fact

____ LCRAR Report or agency Affidavit

____ 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

✓ 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

✓ Notice of Submission to the Attorney General

RECEIVED
MAY 02 1984
ATTORNEY GENERAL
ADMINISTRATIVE

STATE OF MINNESOTA

DEPARTMENT OF REVENUE
P. O. Box 64446
St. Paul, Minnesota 55164
Telephone: (612) 296-1022

May 1, 1984

Office of the Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Adoption of a New Rule and Repeal of a
Rule Relating to Estate Tax (13 MCAR Section 1.2220)

Dear Sir or Madam:

In accordance with Minn. Stat. Section 14.26 and 1 MCAR Section 1.203, the required information relating to the above-referenced rule was submitted for your review on April 23, 1984. The rule was not approved by your office. This letter serves as the vehicle for resubmission of the rule. Comments in the letter of April 23, 1984, from Martha Casserly have been addressed. I enclose the following documents for your review:

1. Rule as Adopted (original and 3 copies).
2. Order Adopting (two copies).
3. Order for Notice of Intent to Adopt a Rule Without a Public Hearing. (Previously submitted.)
4. Notice of Intent to Adopt a Rule Without a Public Hearing. (Previously submitted.)
5. Affidavit of Mailing (Notice of Intent to Adopt a Rule Without a Public Hearing). (Previously submitted.)
6. Certificate of Completeness and Accuracy (Mailing List Certificate). (Previously submitted.)
7. Rule as Proposed. (Previously submitted.)

8. Copy of the State Register, Volume 8, Number 34, February 20, 1984, in which the rule was published. (Previously submitted.)
9. Statement of Need and Reasonableness. (Previously submitted.)
10. Statement of Compliance with Rulemaking Procedure.
11. Notice of Submission to the Attorney General.

There were no written comments received by the Department of Revenue on the proposed rule.

Please contact me if there are any questions.

Very truly yours,

Luci Mitchell

LUCI MITCHELL, Attorney
Commissioner's Staff

LM:dlw
Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR C. ROEMER
Commissioner of Revenue

DATE: 4/23/84

ATTN: LUCI A. MITCHELL, Legal Research Attorney

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of a Rule and Repeal of a Rule Relating to Estate Tax

The rules in the above-entitled matter have not been approved by this office for the following reasons:

1. 13 MCAR § 1.2220 D. provides that organizations may qualify for a waiver from the general rule that contents of a safe deposit box shall not be surrendered upon the death of the authorized representative until it has been inventoried by the County Treasurer. This rule defines organizations so as to include corporations or partnerships, and thus would include small businesses within its scope. Therefore, since this rule does "affect" small businesses, the agency, in promulgating this rule, must comply with Minn. Stat. § 14.115 (Supp. 1983).

Minn. Stat. § 14.115 (Supp. 1983) has not been complied with in two respects. First, subd. 4 of § 14.115 requires an agency to provide opportunities for small businesses to participate in the rulemaking process utilizing one of four methods. It appears that none were utilized. Secondly, subd. 2 of § 14.115 requires that the agency consider various methods for reducing the impact of the rule on small businesses and to document how it considered these methods and the results in its Statement of Need and Reasonableness. Again, there is nothing in the Statement of Need and Reasonableness referring to this requirement.

2. 13 MCAR § 1.2220 D. states that:

> When a safe deposit box is rented to an organization, the commissioner may waive the inventory requirement if the depository files with the commissioner of revenue a report prepared by an authorized representative of the organization.

(Emphasis added). The use of the word "may" leaves uncertain whether a waiver will be granted if the report contains the required information. This vests impermissibly broad discretion in the Commissioner and thus fails to make the law specific as required by Minn. Stat. § 14.02, subd. 4. Furthermore, this unbridled discretion poses the risk of unequal application of the waiver power.

To correct this defect, the word "may" must be changed to "shall" or the rule must set forth some criteria or standard by which the Commissioner will approve any organization's request for waiver.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. Upon resubmission, please include a new or supplemental Order Adopting and four copies of the new Rules as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

MJC:dw

cc: Duane Harves
Kathy Burek
Paul Marinac

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Telephone: (612) 296-1022

P. O. Box 64446
St. Paul, Minnesota 55164

April 5, 1984

Office of the Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Adoption of a New Rule and Repeal of a
Rule Relating to Estate Tax (13 MCAR Section 1.2220)

Dear Sir or Madam:

In accordance with Minn. Stat. Section 14.26 and 1 MCAR Section 1.203, I enclose the following documents for your review:

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9. Statement of Need and Reasonableness.
10. Statement of Compliance with Rulemaking Procedure.
11. Notice of Submission to the Attorney General.

There were no written comments received by the Department of Revenue on the proposed rule.

Please contact me if there are any questions.

Very truly yours,

Luci Mitchell

LUCI MITCHELL, Attorney
Commissioner's Staff

LM:dlw
Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : ARTHUR C. ROEMER
Commissioner of Revenue
Attn: LUCI A. MITCHELL

DATE: 5/8/84

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Adoption of a New Rule and Repeal of Rule Relating to Estate Tax

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;

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.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC: sa

AG copy

Department of Revenue
Income Tax Division
Estate and Fiduciary Tax Group

Adopted Rule and Repeal of a Rule Relating to Estate Tax

Rules as Adopted

13 MCAR S 1.2220 Safe deposit boxes.

A. General rule. Except as provided in B., C., and D., the contents of a safe deposit box to which a decedent had access shall not be surrendered by the depository to any person until the contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

B. Exception for surviving spouse. If the person seeking access to a safe deposit box is a surviving spouse of the decedent and if the surviving spouse had a contractural right as a joint tenant to enter the safe deposit box prior to the decedent's death, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee. For purposes of B., the deceased tenant and spouse seeking access must be designated as joint tenants on the safe deposit box rental agreement.

If the person seeking access to a safe deposit box is a surviving spouse and the court-appointed personal representative of the decedent's estate, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee.

C. Exception for death of authorized agent. When an agent specifically authorized by a safe deposit box tenant dies, access may be granted to the tenant without an inventory by the county treasurer or the designee of the county treasurer. For purposes of C., an authorized agent does not include court-appointed fiduciaries. C. only applies to agents designated by individual renters of the safe deposit box and

subject to the terms of the "Deputy Appointment" agreement.

~~D.--Safe-deposit-boxes-rented-to-organizations.--For-purposes of-D.,-an-organization-may-be-an-association,-corporation,-a partnership,-or-other-organized-group.--Individuals-renting boxes-as-joint-tenants-or-tenants-in-common-are-excluded-from this-provision.--When-a-safe-deposit-box-is-rented-to-an organization,-the-commissioner-may-waive-the-inventory requirement-if-the-depository-files-with-the-commissioner-of revenue-a-report-prepared-by-an-authorized-representative-of-the organization.--The-report-must-state-that-the-safe-deposit-box is-rented-to-an-organization-which-grants-authority-to-certain of-its-officers,-members,-or-agents-to-enter-the-safe-deposit box-in-the-course-of-the-business-or-activities-of-the organization.~~

~~The-report-must-contain-the-following-information:~~

~~1.--the-name-of-the-organization,-association, partnership,-or-entity;~~

~~2.--the-type-of-activities-in-which-applicant-is-engaged;~~

~~3.--an-itemized-list-of-the-property-or-documents-usually stored-in-the-safe-deposit-box;~~

~~4.--the-titles-or-names-of-all-to-whom-right-of-access-to the-box-is-given;-and~~

~~5.--a-statement,-under-oath,-that-no-personal-property-of any-officers,-members,-or-agents-will-be-kept-in-the-box.~~

~~If-the-application-is-approved,-the-commissioner-will notify-the-applicant-that-the-death-of-a-person-authorized-to enter-the-safe-deposit-box-rented-by-the-applicant-will-not require-an-inventory-by-the-county-treasurer.--Upon-presentation of-the-approved-application,-the-depository-may-grant-access without-requiring-an-inventory.~~

~~If-the-report-is-not-filed-by-the-depository-with-the commissioner,then-upon-the-death-of-a-person-authorized-by-the organization-to-enter-the-safe-deposit-box,-access-shall-not-be surrendered-by-the-depository-to-any-person-until-its-contents have-been-inventoried-by-the-county-treasurer-or-a-person authorized-by-the-county-treasurer-to-perform-the-inventory.~~

Renumbering. Renumber part 8150.2200, subpart 4, item F. as part 8150.2210.

Repealer. ~~Inh-Tax-219-is-repealed~~ Minnesota Rules, part 8150.2200, subparts 1, 2, 3, and 4, items A, B, C, D, E, G, H, I, J, and K, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY - 9 1984
Joan Anderson Growe
Secretary of State

1:45PM

APPROVED AS TO FORM AND LEGALITY
May 8 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

FG copy

Department of Revenue
Income Tax Division
Estate and Fiduciary Tax Group

Adopted Rule and Repeal of a Rule Relating to Estate Tax

Rules as Adopted

13 MCAR S 1.2220 Safe deposit boxes.

A. General rule. Except as provided in B., C., and D., the contents of a safe deposit box to which a decedent had access shall not be surrendered by the depository to any person until the contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

B. Exception for surviving spouse. If the person seeking access to a safe deposit box is a surviving spouse of the decedent and if the surviving spouse had a contractural right as a joint tenant to enter the safe deposit box prior to the decedent's death, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee. For purposes of B., the deceased tenant and spouse seeking access must be designated as joint tenants on the safe deposit box rental agreement.

If the person seeking access to a safe deposit box is a surviving spouse and the court-appointed personal representative of the decedent's estate, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee.

C. Exception for death of authorized agent. When an agent specifically authorized by a safe deposit box tenant dies, access may be granted to the tenant without an inventory by the county treasurer or the designee of the county treasurer. For purposes of C., an authorized agent does not include court-appointed fiduciaries. C. only applies to agents designated by individual renters of the safe deposit box and

subject to the terms of the "Deputy Appointment" agreement.

D. Safe deposit boxes rented to organizations. For purposes of D., an organization may be an association, corporation, a partnership, or other organized group. Individuals renting boxes as joint tenants or tenants in common are excluded from this provision. When a safe deposit box is rented to an organization, the commissioner may waive the inventory requirement if the depository files with the commissioner of revenue a report prepared by an authorized representative of the organization. The report must state that the safe deposit box is rented to an organization which grants authority to certain of its officers, members, or agents to enter the safe deposit box in the course of the business or activities of the organization.

no indication of criteria to govern agency discretion

The report must contain the following information:

1. the name of the organization, association, partnership, or entity;

2. the type of activities in which applicant is engaged;

3. an itemized list of the property or documents usually stored in the safe deposit box;

4. the titles or names of all to whom right of access to the box is given; and

5. a statement, under oath, that no personal property of any officers, members, or agents will be kept in the box.

If the application is approved, the commissioner will notify the applicant that the death of a person authorized to enter the safe deposit box rented by the applicant will not require an inventory by the county treasurer. Upon presentation of the approved application, the depository may grant access without requiring an inventory.

If the report is not filed by the depository with the commissioner,then upon the death of a person authorized by the organization to enter the safe deposit box, access shall not be surrendered by the depository to any person until its contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

Repealer. Inh Tax 219 is repealed.

Rule as Proposed (all new material)

13 MCAR S 1.2220 Safe deposit boxes.

A. General rule. Except as provided in B., C., and D., the contents of a safe deposit box to which a decedent had access shall not be surrendered by the depository to any person until the contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

B. Exception for surviving spouse. If the person seeking access to a safe deposit box is a surviving spouse of the decedent and if the surviving spouse had a contractural right as a joint tenant to enter the safe deposit box prior to the decedent's death, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee. For purposes of B., the deceased tenant and spouse seeking access must be designated as joint tenants on the safe deposit box rental agreement.

If the person seeking access to a safe deposit box is a surviving spouse and the court-appointed personal representative of the decedent's estate, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee.

C. Exception for death of authorized agent. When an agent specifically authorized by a safe deposit box tenant dies, access may be granted to the tenant without an inventory by the county treasurer or the designee of the county treasurer. For purposes of C., an authorized agent does not include court-appointed fiduciaries. C. only applies to agents designated by individual renters of the safe deposit box and subject to the terms of the "Deputy Appointment" agreement.

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APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

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The report must contain the following information:

1. the name of the organization, association, partnership, or entity;

2. the type of activities in which applicant is engaged;

3. an itemized list of the property or documents usually stored in the safe deposit box;

4. the titles or names of all to whom right of access to the box is given; and

5. a statement, under oath, that no personal property of any officers, members, or agents will be kept in the box.

If the application is approved, the commissioner will notify the applicant that the death of a person authorized to enter the safe deposit box rented by the applicant will not require an inventory by the county treasurer. Upon presentation of the approved application, the depository may grant access without requiring an inventory.

If the report is not filed by the depository with the commissioner,then upon the death of a person authorized by the organization to enter the safe deposit box, access shall not be surrendered by the depository to any person until its contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

Repealer. Inh Tax 219 is repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD479

Agency: Department of Revenue

Division: Estate Tax Division

Agency Contact: Luci Mitchell

Rule Numbers: 13 MCAR S 1.2220

Title: Safe Deposit Boxes

Type of Rules: Permanent

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Janet C. Rahm
Assistant Revisor
Phone: 296-0952
Date: February 1, 1984

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

ORDER ADOPTING RULE

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on February 20, 1984, at 8 SR 1896, pages 1896 and 1997, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14 subdivision 1, on February 23, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice; receiving fewer than seven written requests for a public hearing within the 30-day period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rule,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 13 MCAR § 1.2220 Safe Deposit Boxes are adopted as modified this 1st day of May 1984, pursuant to authority vested in me by Minnesota Statutes Section 291.31, subd. 2.

STATE OF MINNESOTA

Arthur C. Roemer

ARTHUR C. ROEMER
Commissioner of Revenue

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

ORDER ADOPTING RULE

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NOW, THEREFORE, IT IS ORDERED that these rules identified as 13 MCAR § 1.2220 Safe Deposit Boxes are adopted this 30th day of March, 1984, pursuant to authority vested in me by Minnesota Statutes Section 291.31, subd. 2.

STATE OF MINNESOTA

Arthur C. Roemer

ARTHUR C. ROEMER
Commissioner of Revenue

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A NEW RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

ORDER FOR NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

IT IS ORDERED this 3rd day of February, 1984, that a Notice of Intent to Adopt a Rule Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Revenue for that purpose and be published in the State Register.

STATE OF MINNESOTA

Arthur C. Roemer

ARTHUR C. ROEMER
Commissioner of Revenue

Date: February 3, 1984

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A NEW RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Department of Revenue proposes to adopt the above-entitled rule without a public hearing. The Commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes §§ 14.21 to 14.28.

Persons interested in this rule shall have thirty days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the thirty-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statute §§ 14.13 to 14.20.

Persons who wish to submit such comments or a written request for a public hearing should submit such comments or requests to:

Luci Mitchell, Attorney
Commissioner's Staff
Minnesota Department of Revenue
P. O. Box 43446
St. Paul, Minnesota 55164
Telephone: (612) 296-1022

Authority for the adoption of this rule is contained in Minnesota Statutes § 291.31, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule has been prepared and is available from Luci Mitchell upon request. A copy of the proposed rule is also available from Luci Mitchell.

Upon adoption of the final rule without a public hearing, the proposed rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rule as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final

rule as proposed for adoption, should submit a written statement of such request to Luci Mitchell.

The rule proposed for adoption relates to repeal of an obsolete inheritance tax rule and adoption of a new rule relating to inventory of safety deposit boxes. The new rule incorporates the previous exemption from the inventory requirement for safe deposit boxes rented by organizations. The exemption from inventory is effective upon application to and approval by the Commissioner of Revenue. The exemption is also extended to surviving spouses who are co-tenants with or personal representatitves of their deceased spouse. An inventory is also not required upon death of an agent appointed by the tenant.

Date: February 3, 1984

Arthur C. Roemer

ARTHUR C. ROEMER
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED
ADOPTION OF A RULE AND REPEAL OF
A RULE RELATING TO ESTATE TAX

AFFIDAVIT OF MAILING

Donna L. Walbridge, being first duly sworn, deposes and says:

That on the 23rd day of February, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt a Rule Without a Public Hearing, in the State of Minnesota Central Mail System for United States mailing at said city of St. Paul, a copy thereof, properly enveloped, with first-class postage prepaid, to all persons and associations who have requested that their names be placed on file with the Minnesota Department of Revenue for the purpose of receiving notice of the proposed adoption of rules by this Department.

Donna L. Walbridge
DONNA L. WALBRIDGE

Subscribed and sworn to before me this
23 day of February, 1984.

Patricia A. Lien

PATRICIA A. LIEN
NOTARY PUBLIC MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov 19, 1987

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A NEW RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached pages numbered 1 through 29 consisting of 342 typewritten names and addresses constitute the complete list of persons, associations and other interested groups who, as of 8 o'clock a.m., this 21st day of February, 1984, have requested pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

STATE OF MINNESOTA
ARTHUR C. ROEMER
COMMISSIONER OF REVENUE

By: Donna L Walbridge
Donna Walbridge
Commissioner's Staff

MAILING LIST FOR OFFICIAL NOTICE OF AGENCY RULEMAKING #1

Advocate for the Blind
1821 University Avenue, Rm. 389S
St. Paul, MN 55104

Mr. Bruce Akerman
1300 N.W. Bank Building
Minneapolis, MN 55402

Mr. Allard, C.P.A.
201 West Burnsville Parkway
Suite 130M
Burnsville, MN 55337

American Legion Club
Box 183
Hill City, MN 55748

Anderson & Peterson, LPAs
Dodge Professional Building
Moose Lake, MN 55767

David J. Anderson
Certified Public Accountant
2415 Annapolis Lane, Suite 110
Minneapolis, MN 55441

Dwight C. Anderson, C.P.A.
Box 2924
Fargo, ND 58108

Anderson, Johnson & Co., Ltd.
Certified Public Accountants
1068 South Lake St.
Forest Lake, MN 55025

Anderson, Keszler & Associates
Accountants and Auditors
1202 23rd Street So., Box 2924
Fargo, ND 58108

Arrowhead Accounting Service
Box 240
Coleraine, MN 55722

Arsenal Sand & Gravel Co., Inc.
P. O. Box 12707
New Brighton, MN 55112

Arthur Treacher's Fish & Chips, Inc.
5501 Tabor Road
Philadelphia, PA 19120
Attn: J. A. Altomare

Association of MN Counties
2305 Ford Parkway
St. Paul, MN 55116
Attn: James C. Shipman
Executive Director

Ausmus Furniture & Carpet
Hinckley,
MN 55037

Auto-Soler Co.
5101 Fulton Industrial Blvd. SW
Atlanta, GA 30336
Attn: H. Ensign, General Accountant

Wesley L. Bahl
P. O. Box 822
Faribault, MN 55021

Donald V. Bailey
Attorney at Law
306 Minnesota Federal Bldg.
607 Marquette Avenue
Minneapolis, MN 55402

Bankers Service Company
1918 W. County Rd. C.
Roseville, MN 55113
Attn: Glenn Thomasen

Bauer Built, Inc.
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Minneapolis, MN 55402

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Attn: John E. Loberg, Vice Pres., Finance

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Mankato, MN 56001

S & FA Reporting Services, Inc.
1101 - 15th Street N.W.
Washington, D.C. 20005
Attn: Regulatory Department

St. Paul Bank for Cooperatives
Farm Credit Banks Building
375 Jackson Street
St. Paul, MN 55101
Attn: Joel A. Huser

St. Paul Co., Inc.
Corp. Law Department
385 Washington Street
St. Paul, MN 55102
Attn: Claudia Smith

Savings League of Minnesota
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Minneapolis, MN 55402

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St. Paul, MN 55102
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White Bear Lake, MN 55110

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Green Bay, WI 54303

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L. A. Klepperich
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Minneapolis, MN 55423

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Eden Prairie, MN 55344
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Cedar, MN 55011

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Minneapolis, MN 55402
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404 NE 2nd Avenue
Little Falls, MN 56345
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Tri-Mac Building Supply, Inc.
571 East Fourth Street
Winona, MN 55987
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TRW Cinch Connectors
Electronic Components Div.
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Elk Grove Village, IL 60007
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Gunflint Trail
Grand Marais, MN 55604

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Winona, MN 55987

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Wichita, KS 67202
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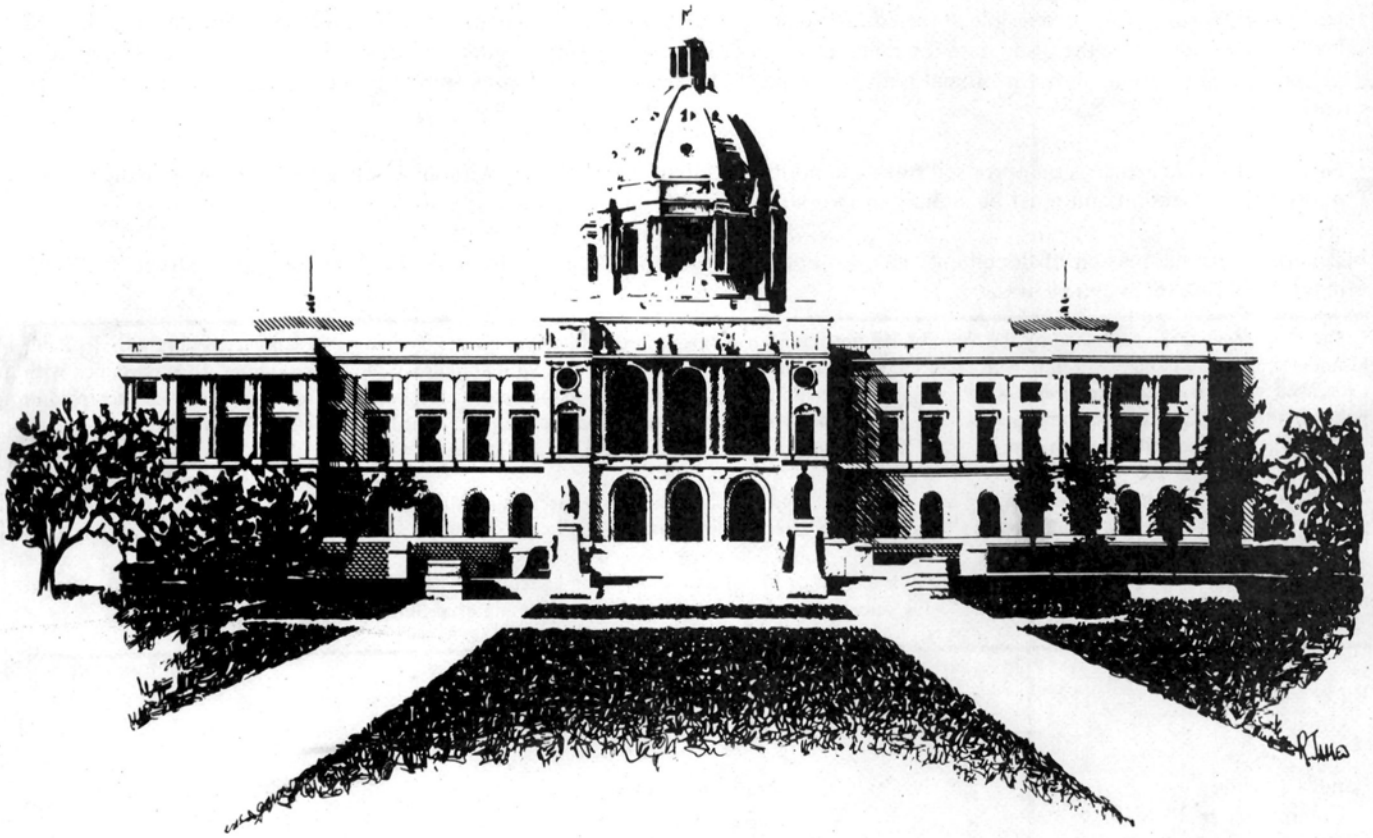
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STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 34

February 20, 1984

Pages 1889-1912

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
35	Monday Feb 13	Friday Feb 17	Monday Feb 27
36	Friday Feb 17	Monday Feb 27	Monday Mar 5
37	Monday Feb 27	Monday Mar 5	Monday Mar 12
38	Monday Mar 5	Monday Mar 12	Monday Mar 19

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Issues 27-38, Inclusive 1892

PROPOSED RULES

Public Safety Department
Liquor Control Division

Proposed Adoption of Rules of the State Department of Public Safety Governing Liquor Control, Delivery and Transportation, Vehicle Permits 1893

Revenue Department
Income Tax Division
Estate and Fiduciary Tax Group

Proposed Adoption of a New Rule and Repeal of a Rule Relating to Estate Tax 1896

ADOPTED RULES

Labor and Industry Department
Workers' Compensation Division

Adopted Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits 1898

OFFICIAL NOTICES

Ethical Practices Board

Notice of Advisory Opinion #86 1899

Health Department
Environmental Health Division

Request for Information Regarding Capability to Perform Laboratory Analysis of Environmental Specimens 1900

Housing Finance Agency
Home Improvement Division

Notice of Funding Availability for Residential Rental Energy Conservation 1900

Transportation Department

Petition of Anoka County for a Variance from State Aid Standards for Street Width 1901

Petition of Lake County for a Variance from State Aid Standards for Design Speeds 1901

Petition of Pope County for a Variance from State Aid Standards for Design Speed 1901

Petition of Redwood County for a Variance from State Aid Standards for Design Speed 1902

Petition of Rice County for a Variance from State Aid Standards for Design Speed 1902

Petition of the City of Brainerd for a Variance from State Aid Standards for Street Width 1902

Petition of the City of Hastings for a Variance from State Aid Standards for Street Width 1903

Petition of Wabasha County for a Variance from State Aid Standards for Sidewalk Construction 1903

Petition of Watonwan County for a Variance from State Aid Standards for Design Speed 1903

Transportation Department
Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee 1904

STATE CONTRACTS

Administration Department
Procurement Division

Commodities Contracts Currently Open for Bidding 1905

Energy & Economic Development Department
Energy Division
Office of Energy Development

Request for Proposals for Business Development of Fiber Fuel Energy Resource 1905

Energy & Economic Development Department
Energy Division
Office of the Assistant Commissioner

Request for Proposals for a Market-Development Study in the Fiber Fuels Industries 1906

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, February 6, 1984 1907

Decisions of the Supreme Court Filed Friday, February 10, 1984 1908

ERRATA 1909

NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0090-1.0100 (adopted) 1858
3 MCAR §§ 1.0129-1.0130, 1.0132-1.0133, 1.0135 [Amend] (Adopted) 1659
3 MCAR §§ 1.0389, 1.0400 [Amend] (proposed) 1561
3 MCAR §§ 1.1340-1.1348 [Temp] (adopted) 1776
3 MCAR §§ 1.4060-1.4070 [Temp] (adopted) 1857
3 MCAR §§ 2.001, L.SB 43, 3 MCAR § 2.044 (adopted) 1659
3 MCAR § 2.011 [Amend] (adopted) 1659

Part 2 Animal Health Board

3 MCAR § 2.026 (proposed) 1704

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.9140-1.9141, 1.9143-1.9147 (proposed) 1711
4 MCAR §§ 1.9260-1.9269 [Temp] (proposed) 1821
4 MCAR §§ 1.9420-1.9442 (proposed) 1568
4 MCAR §§ 1.9801-1.9810 (proposed) 1562

Part 4 Cable Communications Board

4 MCAR §§ 4.260-4.263 (proposed) 1807

Part 7 Architecture, Engineering, Land Surveying & Landscape Architecture

4 MCAR § 7.004 (adopted) 1777

Racing Commission

4 MCAR §§ 15.001-15.050 (adopted) 1823

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR § 1.0790 (proposed) 1715

Part 2 Higher Education Coordinating Board

5 MCAR §§ 2.210-2.2106, 2.2204 (proposed) 1812

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR § 1.0057 [Amend] (adopted) 1858
6 MCAR § 1.2200 [Amend] (proposed) 1674

Part 2 Energy and Economic Development

6 MCAR § 2.2501-2.2510 [Amend] (proposed) 1717

Part 4 Pollution Control Agency

6 MCAR § 4.00291 [Amend] (adopted) 1675
6 MCAR §§ 4.9100, 4.9102, 4.9104, 4.9128-4.9129, 4.9132, 4.9134-4.9135, 4.9210, 4.9214-4.9217, 4.9254-4.9255, 4.9285, 4.9289, 4.9296-4.9297, 4.9392, 4.9307-4.9308, 4.9310, 4.9314, 4.9317-4.9318, 4.9321, 4.9389, 4.9396, 4.9401, 4.9493, 4.9409, 4.9411, 4.9560 [Amend] (proposed) 1576
6 MCAR §§ 4.9701-4.9706 (adopted) 1781

Part 8 Waste Management Board

6 MCAR §§ 8.403-8.404, 8.408 [Amend] (adopted) 1876

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.210, 1.212, 1.216 (adopted) 1625
7 MCAR §§ 1.651, 1.654 [Amend] (adopted) 1821
7 MCAR § 1.801 [Temp] (proposed) 1809

Part 5 Nursing Board
7 MCAR §§ 5.4000-5.4006 (proposed) 1731

TITLE 8 LABOR

Part 1 Labor and Industry
8 MCAR § 1.7001 (adopted) 1738
8 MCAR §§ 1.7220, 1.7240, 1.7243, 1.7245 (proposed) 1814
8 MCAR §§ 1.8003-1.8004, 1.8006-1.8007 [Amend] (proposed) 1657
8 MCAR §§ 1.9001-1.9010 [renumbered 1.9050-1.9059] 1898
8 MCAR §§ 1.9001-1.9025 [Amend] [Temp] (adopted) 1821
8 MCAR §§ 1.9050-1.9059 (adopted) 1898
RS 1, 14, 15, 17-19 (adopted) 1777

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department
11 MCAR §§ 1.8025, 1.8058, 1.8084 (proposed) 1893

TITLE 12 SOCIAL SCIENCE

Part 2 Public Welfare Department
12 MCAR §§ 2.0300-2.0304 [Temp] (adopted) 1858
12 MCAR §§ 2.04601-2.04606 [Temp] (proposed) 1817
12 MCAR §§ 2.0481-2.0484 [Temp] (proposed) 1743
12 MCAR §§ 2.05301-2.05315 [Temp] (adopted) 1858
12 MCAR §§ 2.05401-2.05403 [Temp] (extended) 1822
12 MCAR §§ 2.05501-2.05509 [Temp], 2.04422 [Temp] (extended) 1822
12 MCAR § 2.164 [Temp] (extended) 1823
12 MCAR § 2.200 [Amend] (proposed) 1589

Part 3 Housing Finance Agency
12 MCAR §§ 3.002 [Temp], 3.055 [Temp]-3.057 [Temp] (extended) 1659
12 MCAR §§ 3.058-3.061 [Temp] (extended) 1858
12 MCAR §§ 3.160-3.165 [Temp] (extended) 1858

TITLE 13 TAXATION

Part 1 Revenue Department
13 MCAR § 1.2220 (proposed) 1896

TITLE 14 TRANSPORTATION

Part 1 Transportation Department
14 MCAR § 1.5032 (adopted) 1603

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Safety
Liquor Control Division

Proposed Adoption of Rules of the State Department of Public Safety Governing Liquor Control, Delivery and Transportation, Vehicle Permits

Notice of Intent to Adopt Rules without a Hearing

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. Sections 14.21 through 14.28.

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.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. Sections 14.13 through 14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a free copy of this notice and/or a free copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Diane Dybevik
Department of Public Safety
211 Transportation Building
St. Paul, MN 55155

The Department's authority to adopt the proposed rules is contained in Minnesota Statutes Section 299A.02 and Chapter 340. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Department of Public Safety upon request.

You are hereby advised, pursuant to Laws 1983, Ch. 188, "Small business consideration in rulemaking", that the proposed rule amendments may have an impact on some small businesses in Minnesota. The portions of the rule as revised which may affect small businesses include:

1. The annual fee for regulatory permits, authorizing persons to engage in the purchase, sale or use other than consumption of intoxicating alcoholic beverages or ethyl alcohol, is increased from $5 to $12.

2. The requirement for common carriers to obtain a vehicle permit to transport distilled spirits, wine or malt liquor is repealed.

3. The requirement that off-sale liquor dealers have a vehicle permit to engage in home delivery of intoxicating liquor is repealed.

The department believes that items 2 and 3 above will benefit small businesses. The repeal of vehicle permits to transport liquor in common carriers and for deliveries eliminates an element of government regulation for 7,500 permit holders. Item 1 above, a fee increase, will cost an additional 7,500 holders of these permits $7 more each or a total of $52,500 more per year. Holders of liquor regulatory permits should review this rule to determine the impact on them.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. Section 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

The department estimates that the total cost to all local public bodies in the state is under $2,000 to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes Section 14.11, subdivision 1.

A copy of the proposed rules is attached to this notice.

Paul J. Tschida
Commissioner of Public Safety

Rules as Proposed

11 MCAR § 1.8025 Regulatory permits and fees.

Any person engaged in the purchase, sale, or use for any purpose other than personal consumption of intoxicating alcoholic beverages or ethyl alcohol, ~~or any vehicle used to transport intoxicating alcoholic beverages or ethyl alcohol~~ shall obtain the appropriate regulatory permit and identification card from the commissioner as provided in this rule. The ~~regulatory~~ fee for each permit, other than one issued to a state or federal agency, is ~~$5.00~~ $12 and shall be submitted together with the appropriate application form provided by the commissioner. ~~All~~ Identification cards and permits shall ~~expire on December 31st of the year~~ be issued for a period coinciding with that of the appropriate state or municipal license and are not transferable. In instances where there is no annual license period, cards and permits shall expire one year after the date of issuance. The authority to engage in the purchase, sale, or use ~~or transport~~ granted by the card or permit ~~in this section~~ may be revoked by the commissioner upon evidence of a violation by the holder of such a card or permit of any of the provisions of Minnesota Statutes ~~ch.~~, chapter 340, or any rule of the commissioner made pursuant to law.

In order to coordinate the expiration date of permits and cards with that of the appropriate state or municipal license, permits and cards issued in January 1985 in conjunction with state or municipal licenses expiring prior to July 1, 1985, shall be issued for a term extending until the expiration date of the license in 1986. Permits and cards issued in January 1985 in conjunction with state or municipal licenses expiring after June 30, 1985, shall be issued for a term extending until the expiration date of the license in 1985. The fee for cards and permits issued during January 1985 for periods of more or less than one year shall be prorated at $1 per month. Subsequent renewals shall be for a 12-month period.

A.-C. [Unchanged.]

D. ~~Vehicle permit. All common carriers other than railroads, their motor affiliates, or public water transportation carriers, transporting into or within the state of Minnesota, distilled spirits, wine, or malt beverages containing more than 3.2 percent of alcohol by weight shall apply to the commissioner on Form No. 38 for vehicle permits for each vehicle used in the transportation thereof. Such permit shall be issued only to common carriers licensed by the Minnesota Department of Public Service and to Minnesota manufacturers, winers, brewers, wholesale distributors, retail "off-sale" dealers licensed to sell intoxicating liquor, and other qualified persons, PROVIDED that no permits are required for trailers. Intoxicating liquor transported in any manner other than specified herein shall be confiscated and surrendered to the commissioner for final disposition~~ State or federal agency permits. Permits for state or federal agencies shall be issued without charge.

E. [Unchanged.]

11 MCAR § 1.8058 Delivery.

Licensed or authorized "off-sale" retail liquor dealers and no other class of dealers may make deliveries of intoxicating liquor from their stores to the residence of a purchaser or other location, provided however, that such delivery shall be made only to a person ~~eighteen~~ 18 or more years of age; and provided further, that such delivery shall not be made to beer taverns or other public or private place in violation of law or ordinance.

A.-C. [Unchanged.]

D. ~~Delivery vehicle permits required. See 11 MCAR Section 1.8025 D.~~

~~E.~~ Open stock deliveries prohibited. Only alcoholic beverages ordered and packed at the store for delivery shall be carried in the delivery vehicle.

11 MCAR § 1.8084 Transportation

Only common carriers or duly licensed Minnesota manufacturers or wholesale distributors shall transport distilled spirits, wine, ethyl alcohol, or malt beverages into this state.

~~A. All common carriers except railroads, their motor affiliates and public water transportation carriers, shall obtain a permit as provided in 11 MCAR Section 1.8025 D., for each vehicle used to transport alcoholic beverages in Minnesota.~~

Effective date. Rules 11 MCAR §§ 1.8025 D. and 1.8084 A., relating to the repeal of vehicle permits, are effective July 1, 1984, or five days after final publication in the *State Register*, whichever is later.

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.

Department of Revenue
Income Tax Division
Estate and Fiduciary Tax Group

Proposed Adoption of a New Rule and Repeal of a Rule Relating to Estate Tax

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to adopt the above-entitled rule without a public hearing. The Commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes §§ 14.21 to 14.28.

Persons interested in this rule shall have thirty days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the thirty-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statute §§ 14.13 to 14.20.

Persons who wish to submit such comments or a written request for a public hearing should submit such comments or requests to:

Luci Mitchell, Attorney
Commissioner's Staff
Minnesota Department of Revenue
P.O. Box 43446
St. Paul, Minnesota 55164
Telephone: (612) 296-1022

Authority for the adoption of this rule is contained in Minnesota Statutes § 291.31, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule has been prepared and is available from Luci Mitchell upon request. A copy of the proposed rule is also available from Luci Mitchell.

Upon adoption of the final rule without a public hearing, the proposed rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rule as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Luci Mitchell.

The rule proposed for adoption relates to repeal of an obsolete inheritance tax rule and adoption of a new rule relating to inventory of safety deposit boxes. The new rule incorporates the previous exemption from the inventory requirement for safe deposit boxes rented by organizations. The exemption from inventory is effective upon application to and approval by the Commissioner of Revenue. The exemption is also extended to surviving spouses who are co-tenants with or personal representatives of their deceased spouse. An inventory is also not required upon death of an agent appointed by the tenant.

February 3, 1984

Arthur C. Roemer
Commissioner of Revenue

Rule as Proposed (all new material)

13 MCAR § 1.2220 Safe deposit boxes.

A. General rule. Except as provided in B., C., and D., the contents of a safe deposit box to which a decedent had access shall not be surrendered by the depository to any person until the contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

B. Exception for surviving spouse. If the person seeking access to a safe deposit box is a surviving spouse of the decedent and if the surviving spouse had a contractural right as a joint tenant to enter the safe deposit box prior to the decedent's death, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee. For purposes of B., the deceased tenant and spouse seeking access must be designated as joint tenants on the safe deposit box rental agreement.

If the person seeking access to a safe deposit box is a surviving spouse and the court-appointed personal representative of the decedent's estate, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee.

C. Exception for death of authorized agent. When an agent specifically authorized by a safe deposit box tenant dies, access may be granted to the tenant without an inventory by the county treasurer or the designee of the county treasurer. For purposes of C., an authorized agent does not include court-appointed fiduciaries. C. only applies to agents designated by individual renters of the safe deposit box and subject to the terms of the "Deputy Appointment" agreement.

D. Safe deposit boxes rented to organizations. For purposes of D., an organization may be an association, corporation, a partnership, or other organized group. Individuals renting boxes as joint tenants or tenants in common are excluded form this provision. When a safe deposit box is rented to an organization, the commissioner may waive the inventory requirement of the depository files with the commissioner of revenue a report prepared by an authorized representative of the organization. The report must state that the safe deposit box is rented to an organization which grants authority to certain of its officers, members, or agents to enter the safe deposit box in the course of the business or activities of the organization.

The report must contain the following information:

1. the name of the organization, association, partnership, or entity;
2. the type of activities in which applicant is engaged;
3. an itemized list of the property or documents usually stored in the safe deposit box;
4. the titles or names of all to whom right of access to the box is given; and
5. a statement, under oath, that no personal property of any officers, members, or agents will be kept in the box.

If the application is approved, the commissioner will notify the applicant that the death of a person authorized to enter the safe deposit box rented by the applicant will not require an inventory by the county treasurer. Upon presentation of the approved application, the depository may grant access without requiring an inventory.

If the report is not filed by the depository with the commissioner, then upon the death of a person authorized by the organization to enter the safe deposit box, access shall not be surrendered by the depository to any person until its contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

Repealer. Inh Tax 219 is repealed.

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.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Labor and Industry Workers' Compensation Division

Adopted Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits

The rules proposed and published at *State Register*, Volume 8, Number 24, pages 1399-1402, December 12, 1983 (8 S.R. 1399) are adopted with the following modifications:

Rules as Adopted

8 MCAR § ~~1.9001~~ 1.9050 Definitions.

A. Generally. As used in 8 MCAR §§ ~~1.9001-1.9010~~ 1.9050-1.9059, the following terms have the meanings given them.

C. Effective date. "Effective date" as used in 8 MCAR § ~~1.9004~~ 1.9053 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.

8 MCAR § ~~1.9002~~ 1.9051 Authority and purpose.

Rules 8 MCAR §§ ~~1.9001-1.9010~~ 1.9050-1.9059 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these rules is to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

8 MCRA § ~~1.9003~~ 1.9052 Application.

Rules 8 MCAR §§ ~~1.9001-1.9010~~ 1.9050-1.9059 apply only if all of the following prerequisites are met:

8 MCAR § ~~1.9004~~ 1.9053 Procedure.

8 MCAR § ~~1.9005~~ 1.9054 Notice of decision.

Unless grounds for disapproval exist pursuant to 8 MCAR § ~~1.9006~~ 1.9055, the commissioner must approve an application for a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

8 MCAR § ~~1.9006~~ 1.9055 Disapproval by commissioner.

An application for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The application is incomplete, is inaccurate, or is not in conformity with any part of 8 MCAR §§ ~~1.9001-1.9010~~ 1.9050-1.9059. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in 8 MCAR § ~~1.9004~~ 1.9053;

8 MCAR § ~~1.9007~~ 1.9056 Effect of finding.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition ~~a workers'~~

~~compensation settlement judge or other workers' compensation judge~~ for a hearing pursuant to Minnesota Statutes, section 176.305 for a finding or for a revision of a finding of permanent total disability.

8 MCAR § ~~1.9008~~ 1.9057 Revision of finding.

A finding of permanent total disability pursuant to 8 MCAR §§ ~~1.9001-1.9010~~ 1.9050-1.9059 is subject to revision based on judicial order pursuant to rules of the office of administrative hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in 8 MCAR § ~~1.9007-1.9008~~ 1.9056.

8 MCAR § ~~1.9009~~ 1.9058 Severability.

If any provision of 8 MCAR §§ ~~1.9001-1.9008~~ 1.9050-1.9057 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

8 MCAR § ~~1.9010~~ 1.9059 Effective date.

These rules shall apply to requests for reimbursement of supplementary benefits filed on or after the effective date of 8 MCAR §§ ~~1.9001-1.9009~~ 1.9050-1.9058.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Ethical Practices Board

Notice of Advisory Opinion #86

Approved by the Ethical Practices Board on January 12, 1984

Issued to:

Steven Zupke, Administrator
Minnesota Trial Lawyers Political Action Committee
906 Midwest Plaza East
Minneapolis, MN 55402

RE: Contribution Plan

SUMMARY

86. A reverse checkoff system may be used by a membership association to increase the number of contributors to the association's political fund if:

1. a member can checkoff on the dues statement to indicate that the member does not agree to make any contribution to the association's political fund; and

2. a member is notified of protection from economic reprisals under Minn. Stat. Ch. 10A; and

3. dues paid from corporate funds are separated from dues paid by noncorporate funds.

The full text of the opnion is available upon request from the office of the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Department of Health
Division of Environmental Health

Request for Information Regarding Capability to Perform Laboratory Analysis of Environmental Specimens

The Department of Health, Section of Analytical Services, hereby invites analytical laboratories which are capable of performing chemical analyses on environmental samples, to submit to the Department information about that capability. The Department is particularly interested in knowing which laboratories are capable of performing analyses for metals and organics, in accordance with U.S. Environmental Protection Agency methods or techniques.

Interested laboratories should submit information concerning their capability in all of the following areas:

—classes of parameters for which capability exists,

—costs for such analyses,

—possible turnaround times,

—ability to satisfy quality control and quality assurance conditions of various U.S. EPA programs,

—ability to handle large batches of samples on relatively short notice

—names of clients for whom the laboratory has performed some of the type of work about which this invitation is inquiring.

NOTE: This is not a request for proposals. This is merely a way for the Department to learn what capabilities are available at what cost. All responses will be reviewed and included on a list which will be updated periodically. If and when the Department determines that a need exists for work to be done by an outside laboratory, the Department will invite respondents to submit specific proposals to perform work under contract with the Department. All laboratories, whether private, governmental or educational, are invited to respond by March 15, 1984.

Please address responses and any questions or comments to:

Walter Jankowski, Chief (612/623-5300)
Section of Analytical Services
Minnesota Department of Health
717 Delaware Street S.E., P.O. Box 9441
Minneapolis, Minnesota 55440

Housing Finance Agency
Home Improvement Division

Notice of Funding Availability for Residential Rental Energy Conservation

As announced by the Minnesota Housing Finance Agency in the *State Register* dated September 26, 1983, funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Dept. of Housing and Urban Development for the purpose of upgrading the energy efficiency of rental residential property, and are available in those communities participating in implementing the Rental Subsidy Program. In addition to those previously announced, the following communities and lenders are participating in implementing this program:

Community: City of St. Paul
Participating Lender:

Highland Bank
2004 Ford Parkway
St. Paul, MN 55116
(612) 698-2471

Additional communities and lenders participating in implementing the program will be identified in future Notices. For more information on the Program, contact:

Diane Sprague
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-7615

Department of Transportation

Petition of Anoka County for a Variance from State Aid Standards for Street Width

Notice is hereby given that the County Board of Anoka County has made a written request to the Commissioner of Transportation for a variance from minimum design standards for the reconstruction of CSAH 31 (4th Avenue) from Jackson Street to Grant Street in the City of Anoka.

The request is for a variance from 14 MCAR § 1.5032, H., 1.,C., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of 44 feet instead of the required street width of 46 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 10, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Lake County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Lake County has made a written request to the Commissioner of Transportation for a variance from minimum design speed, surface width and shoulder width for a special resurfacing project on CSAH 18 from T.H. 169 to Lake One.

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 35 instead of a required 45 miles per hour; a surface width of 22 instead of a required 24 feet; and a shoulder to shoulder width of 26 instead of a required 32 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Pope County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Pope County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for special resurfacing projects on CSAH 15 from CSAH 28 to the North County Line; and CSAH 29 from TH 104 to TH 55 in Sedan.

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 40 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Redwood County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Redwood County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for special resurfacing projects on CSAH 9 from CSAH 17 to 0.4 mile West; and CSAH 11 from CSAH 2 to the North County Line.

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 43 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Rice County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Rice County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for special resurfacing projects on CSAH 12 from CSAH 16 to CSAH 13; and CSAH 13 from Jewetts Point (STA. 95+00) to the North Limits of Warsaw (STA. 202+00).

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 40 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of Brainerd for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of Brainerd has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width for the construction of North and South Fourth Street from Laurel Street to Washington Street.

The request is for a variance from 14 MCAR § 1.5032, H. 1., c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of 64 feet instead of a required street width of 68.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of Hastings for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of Hastings has made a written request to the Commissioner of Transportation for a variance from minimum design standards street width for 60-Degree Diagonal Parking on Second Street from TH 61 to Tyler Street.

The request is for a variance from 14 MCAR § 1.5032, H., 4., a., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of 70 feet with 60-Degree Diagonal Parking instead of a required street width of 102 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Wabasha County for a Variance from State Aid Standards for Sidewalk Construction

Notice is hereby given that the County Board of Wabasha County has made a written request to the Commissioner of Transportation for a variance from standards for a sidewalk construction project on CSAH 9 from Cross Street to Seventh Street in Lake City.

The request is for a variance from 14 MCAR § 1.5032, K., 4., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit new sidewalk construction where no sidewalk exists instead of only permitting sidewalk construction where proposed construction causes the alteration of existing walks.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 10, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Watonwan County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Watonwan County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project on CSAH 7 from CSAH 5 to the West Limits of Odin.

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 35 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 7, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation
Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State Aid Standards Variance Committee who will conduct a meeting on Friday, March 9, 1984, at 9:30 A.M. in Room 410A, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State Aid roadway standards as governed by MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of the City of Minneapolis for a variance from standards for vertical clearance on the Burnham Road Bridge over the Chicago Northwestern Railroad.

2. Petition of the City of St. Cloud for a variance from standards for street width on Ninth-Tenth Avenue South from First Street South to six-hundred feet South.

3. Petition of the City of St. Louis Park for a variance from standards for street width on Louisiana Avenue (MSAS 276) from Cedar Lake Road (CSAH 15) to TH 12.

4. Petition of the County of Nicollet for a variance from standards for Design Speed on CSAH 1 from CSAH 16 to TH 15 at Lafayette.

5. Petition of the County of Lake for a variance from standards for surface width, shoulder width, and design speed on CSAH 18 from TH 169 to Lake One.

6. Petition of the County of Watonwan for a variance from standards for Design Speed on CSAH 7 from CSAH 5 to the West Limits of Odin.

7. Petition of the City of Hastings for a variance from standards for Street Width on Second Street from TH 61 to Tyler Street.

8. Petition of the County of Wabasha for a variance from standards for Sidewalk construction on CSAH 9 from Cross Street to Seventh Street in Lake City.

The cities and counties listed above are requested to follow the following time schedule when appearing before the Variance Committee:

9:30 A.M.—City of Minneapolis
9:50 A.M.—City of St. Cloud
10:10 A.M.—City of St. Louis Park
10:30 A.M.—Nicollet County
10:50 A.M.—Lake County
11:10 A.M.—Watonwan County
11:30 A.M.—City of Hastings
11:50 A.M.—Wabasha County

February 10, 1984

Richard P. Braun
Commissioner

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers at the indicated phone numbers as soon as possible. If the specific buyer is not available, contact Barbara Jolly or Harvey Leach at 296-3779.

Department of Administration
Procurement Division

Commodities Contracts Currently Open for Bidding

Item	Ordering Division	Delivery Point	Contact Person
Water softener salt	various	various	Harvey 296-3779
25-year service award plaques	Transportation	St. Paul DOT	Harvey 296-3779
License plate material	St. Cloud Reformatory	St. Cloud	Bernadette 296-2546
Prescription unit dose vials	various	various	Donnalee 296-3776
Tools: cutting, miscellaneous	various	various	Maurie 296-3772
Radio alarm & control system	Transportation	St. Paul DOT	Don 296-3777
Film transparencies	various	various	Bernadette 296-2546
Steel chain & accessories	Transportation	various	Maurie 296-3772
Trucks	various	various	Dale 296-3773
Laminated materials—formica, nevamar	MCF Lino Lakes	MCF Lino Lakes	Jim Kinzie 296-3778
Federal signal vehicle warning lights (parts only)	Transportation	TC DOT	Harvey 296-3779

Department of Energy and Economic Development
Energy Division
Office of Energy Development

Request for Proposals for Business Development of Fiber Fuel Energy Resource

Proposals are requested from consulting firms to work with the Energy Division of the Minnesota Department of Energy and Economic Development, other State Agencies, and the fiber fuel industry, on a project to assess institutional barriers to development of Minnesota's fiber fuel resource by private businesses.

The objective of this program is to encourage private sector development in Minnesota's fiber fuel energy resources. Specifically, it will:

- Describe commercialization paths for selected fiber fuel energy technologies.
- Assess the institutional barriers which would frustrate business development in fiber fuel technologies.
- Identify specific actions which can be taken to reduce the negative impact of those barriers.
- Develop prototype business plans for selected new business in the fiber fuel resource area.

Funding for this study has been provided by the Legislative Commission on Minnesota Resources.

The work scope and project are outlined in the RFP document.

Consultants that respond to this RFP should be familiar with Minnesota's fiber fuel industry and energy resources and have experience with new business planning and development. The formal RFP may be requested and inquiries should be directed to:

Ronald E. Sundberg, Manager Energy Development
Energy Division
Minnesota Department of Energy and Economic Development
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the State of $25,000. The deadline for the submission of completed proposals will be 4:30 p.m., March 15, 1984.

This notice does not obligate the State to complete the project. The State reserves the right to cancel this solicitation if it is considered to be in the best interest of the State.

Department of Energy and Economic Development Energy Division Office of the Assistant Commissioner

Request for Proposals for a Market-Development Study in the Fiber Fuels Industries

Proposals are requested from consulting firms to work for the Energy Division of the Minnesota Department of Energy and Economic Development and in close association with the various members of the fiber fuels industries on a project intended to address market development issues in the emerging fiber fuels industry. Specifically, there appears to be a need for studying the level of receptivity on the part of prospective fiber fuel users and for developing a practical way by which confidence in a dependable supply of fiber fuels can be raised.

Objectives of this project will include:

- Studying the feasibility of forming some sort of a "Producers' Cooperative" or other fuel supply pool as a way to raise confidence with prospective users;
- Developing recommendations for fiber fuel producers such that their product gains additional visibility;
- Devising means whereby fiber fuels products are seen generally as a more reliable and viable energy source;
- Stimulating new markets for fiber fuels.

Funding for this project has been provided by the Council of Great Lakes Governors. The work scope and detailed project description are set forth in the RFP document which is available from:

Mr. Ken Yeager, Special Consultant
Energy Division
Minnesota Dept. of Energy & Economic Development
150 East Kellogg Blvd.
St. Paul, MN 55101

It is anticipated that the total cost for these consulting services will not exceed $20,000. and will be completed not later than July 15, 1984. The deadline for submittal of proposals is 4:30 P.M., March 15th, 1984.

Qualified respondents must exhibit recent and direct activities in the fiber fuels industry, a working familiarity with specifically fiber fuel-related market development issues, evidence of their experience in analyzing market development barriers and mitigating circumstances and a general working familiarity with renewable energy industry and industrial development issues.

This notice does not obligate the State to complete this project. The State reserves the right to cancel this solicitation if it is considered in the best interests of the State to do so.

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, February 8, 1984

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1530 State of Minnesota, Respondent, v. Willie James Evans, Appellant. District Court, Hennepin County.

1. Appendix A of appellant's brief in its entirety, is stricken; and

2. Respondent may serve and file its brief on or prior to February 28, 1984. Popovich, C.J.

C0-83-1602 Douglas M. Erickson, Relator, v. Super Valu, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

1. An appeal from the decision of the appeal tribunal must be dismissed if it is not filed within the statutory time.

2. Minn. Stat. § 268.10, subd. 5, provides the procedure for appealing from the decision of the appeal tribunal. Minn. Stat. § 268.10, subd. 2(4), does not provide an additional appeal procedure.

Affirmed. Remanded for reconsideration of the repayment of benefits only. Parker, J.

CX-83-1168 National Recruiters, Inc., Respondent, v. The Toro Company, Appellant. District Court, Hennepin County.

1. The trial court did not err in failing to apply the doctrine of discharge by supervening frustration to relieve Toro of its obligation to pay National Recruiters its placement fee when Toro hired the candidate National Recruiters had referred, and then unilaterally eliminated the new employee's position before that person began working.

2. Toro failed to prove at trial that adverse business conditions beyond its control supervened and caused frustration of the contract between it and National and that the services of the new employee were no longer needed in any capacity.

3. The court did not err in awarding National reasonable attorney fees when Toro refused to settle the case at pretrial conference, claiming that it would present evidence at trial resolving the dispute, then failed to present any credible evidence at trial supportive of its position.

Affirmed. Foley, J.

C7-83-1788 State of Minnesota, Respondent, v. Wilfred James Hines, Appellant. District Court, Ramsey County.

The defendant was convicted of robbery and burglary of an occupied dwelling. The trial judge justifiably departed by doubling the robbery sentence because the defendant robbed a vulnerable 92-year old lady in her home by using cruel, gratuitous threats. The trial court was not justified in departing from the guidelines on the burglary of an occupied dwelling sentence. Entering an occupied dwelling, like the victim's home, is an element of the crime itself. However, in this case, the error is harmless.

Affirmed. Wozniak, J. Took no part, Foley, J.

C3-83-1125 State of Minnesota, Respondent, v. Frank James Wittig, Appellant. District Court, Hennepin County.

1. Trial court's triple departure from presumptive sentence and imposition of a 45-month stayed sentence for theft by swindle aggregating over $2,500 was proper where defendant used a sophisticated scheme to steal $55,000 in tax refunds from the state of Minnesota over a two year period, using part of the stolen money to make restitution for a previous felony.

2. Trial court's durational departure from presumptive sentence did not require rejection of guilty plea where court informed defendant at time of sentencing that the duration would be increased and defendant did not object.

Affirmed. Sedgwick, J.

C8-83-1279 Benny Hollom, Respondent, v. Joyce M. Carey, Appellant. District Court, Anoka County.

The trial court did not err in applying Minn. Stat. §§ 513.075 and 513.076 to bar appellant's claim for damages when the parties lived together in contemplation of sexual relations and out of wedlock, and there was no written contract regarding their financial relationship.

Affirmed. Sedgwick, J.

C6-83-1538 State of Minnesota, Plaintiff, v. Jay M. Corbin and Ronald R. Neibuhr, Defendants. District Court, Faribault County.

Minn. Stat. § 100.273 permits a hunter to enter on unposted agricultural land to retrieve a wounded deer even when orally notified not to do so.

Affirmed. Lansing, J.

Decisions of the Supreme Court Filed Friday, February 10, 1984

Compiled by Wayne O. Tschimperle, Clerk

C4-83-1635 In the Matter of the Contest of Election in the DFL Primary Election held on Tuesday, September 13, 1983, for the purpose of nominating a DFL candidate to run for election as Alderman in the Third Ward of the City of Minneapolis, County of Hennepin, State of Minnesota. Patrick M. Daugherty, contestant, Petitioner, v. Sandra M. Hilary (candidate whose election is contested), contestee, Respondent, Lyal Schwarzkopf, Minneapolis City Clerk, and Lyle Lund, Assistant City Clerk, contestees, Respondents. District Court, Hennepin County.

1-3. Respondent's distribution of an "Official Sample Ballot" falsely implied party endorsement in violation of Minn. Stat. § 210 A.02 (1982). The violation was knowing, deliberate, material, and serious. The violation arose from a want of good faith.

Reversed. Election vacated and set aside. Peterson, J.

Dissenting, Wahl, J., Kelley, J., and Coyne, J.

CX-82-1595 State of Minnesota, Respondent, v. Raymond Leonard Reinke, Appellant. District Court, Cass County.

Trial court did not commit prejudicial error in denying defense motion to bar use of defendant's prior conviction to impeach his credibility when he testified, and evidence supports defendant's conviction of criminal sexual conduct in the first degree.

Affirmed. Peterson, J.

CX-83-246 State of Minnesota, Respondent, v. Kevin Dean Faber, Appellant. District Court, Kandiyohi County.

Trial court, in prosecution of defendant for aggravated DWI, properly denied defendant's motion to suppress blood test results on fourth amendment grounds.

Affirmed. Yetka, J.

C9-83-1033 State of Minnesota, Appellant, v. Thomas Daniel Lepley, Respondent. District Court, Chisago County.

Motor homes, camper vans and similar vehicles used as motor vehicles are covered by the motor vehicle exception to the search warrant requirement.

Reversed and remanded for trial. Yetka, J.

C1-82-898 State of Minnesota, Respondent, v. Martin Czech, Appellant. District Court, Stearns County.

1. Evidence supports defendant's conviction of aggravated robbery.

2. Trial court did not err in admitting tape recording of conversation defendant had with undercover agents that tended to show defendant's involvement in the charged offense, even though the tape tended to show defendant's involvement in other offenses.

3. Trial court did not err in allowing jury to follow copies of transcript of tape as tape was played during trial.

5. Trial court, in sentencing defendant consecutively under Minnesota Sentencing Guidelines and Commentary, II.F.1. (1982), should have computed defendant's sentence duration using the zero criminal history column.

Affirmed as modified. Yetka, J.

C0-82-1332, C4-83-761 John M. Spaeth, Respondent, v. The City of Plymouth Appellant. District Court, Hennepin County.

1. The City has taken real property of the plaintiff in violation of U.S. Const., amend. V, and Minn. Const., art. 1, § 13, by permanently flooding it for use as a municipal storm water holding pond.

2. The trial court properly issued a writ of mandamus compelling defendant to commence eminent domain proceedings. Thus, plaintiff is entitled to an award of attorneys' and experts' fees pursuant to Minn. Stat. § 117.045 (1982) under the circumstances of this case.

3. Pre-litigation expenses are recoverable under Minn. Stat. § 117.045 when such expenses were necessary for the prosecution of the action.

4. A claim for attorneys' and experts' fees under Minn. Stat. § 117.045 raises a matter independent of the merits of the action. Thus, a trial court has continuing jurisdiction to issue an order awarding such fees under that statute, even after a party has perfected its appeal from the merits of the action.

Affirmed. Scott, J.

Took no part, Peterson, J.

CX-83-134 Gary Steven Johnson, petitioner, Appellant, v. Sheriff of Pine County, Minnesota, and Pine County County Attorney, Respondent. District Court, Pine County.

District court properly denied habeas corpus in extradition proceeding. Affirmed. Wahl, J.

C3-83-802 Carolyn Waller, Respondent, George T. Caldwell, Sr., etc., Respondent, v. Powers Department Store, etc., Petitioner. District Court, Hennepin County.

Minneapolis Ordinance § 141.80(c)(7) (1982), which authorizes the court to grant temporary relief against respondents in Minneapolis Department of Civil Rights administrative proceedings, does not permit courts to compel discovery as a means of affording such relief.

Writ issued. Coyne, J.

C1-82-836 In the Matter of the Petition for Disciplinary Action against Steven J. Daffer, a Minnesota Lawyer. Supreme Court.

In the circumstances presented, the lawyer's multiple violations of the rules of professional conduct warrant an indefinite suspension, with leave to apply for readmission in five years.

Per Curiam.

Errata

In *State Register*, Vol. 8, Issue No. 32, the Cable Communications Board was incorrectly classified as part of the Labor & Industry Department. The Board is actually part of the Department of Administration.

STATE OF MINNESOTA

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This Week—weekly interim bulletin of the House. Contact House Information Office.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A NEW RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared as a verbatim presentation of the facts necessary to establish the statutory authority, need for and reasonableness of the proposed new rule. It is submitted pursuant to 9 MCAR Section 2.104 requiring a Statement of Need and Reasonableness.

Authority to Adopt the Rule

Minn. Stat. Section 291.31, Subd. 2, grants the Commissioner statutory authority to establish rules concerning the estate and inheritance taxes.

Statement of Need

The 1979 legislature assed the Omnibus Tax bill which included a repeal of the existing inheritance tax law replacing it with the Minnesota estate tax provisions. The bill was approved by the Governor on June 1, 1979, and became known as Laws 1979, Chapter 303. The estate tax provisions are contained in Article III of Chapter 303 and are effective for estates of decedents dying after December 31, 1979.

The Department has previously repealed rules no longer necessary based upon the legislative changes made in 1979.

Inh Tax 219 was not repealed at that time because the portion of it relating to safe deposit box inventories was still necessary.

Inh Tax 219: Release of Inheritance Tax Liens

The lien provisions of Minn. Stat. § 291.14 were repealed for deaths after December 31, 1979. This portion of the rule is obsolete for deaths after that date. The existing portion of the rule relating to inventories of safe deposit boxes has now been incorporated into the proposed new rule.

New Rule: 13 MCAR § 1.2220

Under the existing rule, Inh Tax 219, it was required that every safe deposit box be inventoried if a contracting party died. There was only one exception which is also included in clause 30 of this new rule. The inventory was performed by the county treasurer or a person designated by the treasurer. The inventory when forwarded to the commissioner was a valuable audit tool. It was used to verify that all assets were reported when a return was filed.

While still helpful, the procedures have been re-examined in light of the following changes.

1. Under current law, there is an unlimited marital exemption. All assets passing to a surviving spouse are exempt from federal and state estate taxes.

2. The minimum filing requirement for 1983 is $275,000 and increases to $600,000 in 1987. Fewer estates will be required to file a Minesota return and still fewer will be subject to a tax liability.

3. The fiscal crunch has caused cutback in county offices and the availability of personnel to perform the inventories has been curtailed. This has caused delays in responding to requests for performing inventories.

Our proposed rule allows access, without an inventory, to a surviving spouse if the surviving spouse is the personal representative of the decedent's estate or the surviving spouse had a contractural right to enter the safe deposit box prior to decedent's death.

The rule also removes the inventory requirement in the case of the death of a deputy who has been appointed by the tenant of the safe deposit box. A deputy so appointed serves at the pleasure of the tenant. There is no need to bar the tenant from access to the tenant's box until there is an inventory when that deputy dies.

It is important to note that the general rule still applies--an inventory is required in all cases which are not covered by clauses B, C or D. In those instances not involving a surviving spouse, the audit potential of the inventory is greater. It is necessary and reasonable to continue the inventory requirements. The volume of inventories will be reduced significantly (how significantly it is impossible to pinpoint) and the remaining requirements will be less of a strain on county personnel.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, LUCI A. MITCHELL, Legal Research Attorney, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Hearings, and the rules of the Attorney General have been followed. There are no exceptions.

Luci A. Mitchell
LUCI A. MITCHELL

Dated: 5-1-84

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, LUCI A. MITCHELL, Legal Research Attorney, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Hearings, and the rules of the Attorney General have been followed. There are no exceptions.

Luci A. Mitchell

LUCI A. MITCHELL

Dated: March 30, 1984

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

NOTICE OF SUBMISSION TO ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, Section 14.26:

PlEASE TAKE NOTICE that the above-captioned rules have been resubmitted to the Office of the Attorney General on this 1st day of May, 1984, for review as to form and legality. Pursuant to 1 MCAR § 1.206C., the Attorney General will not approve the rules for at least eight calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Luci Mitchell, Department of Revenue, Second Floor Centennial Office Building, St. Paul, Minnesota 55145.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Luci A. Mitchell

LUCI A. MITCHELL, Attorney
Commissioner's Staff

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

ESTATE AND FIDUCIARY TAX GROUP

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE AND REPEAL OF A RULE RELATING TO ESTATE TAX

NOTICE OF SUBMISSION TO ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, Section 14.26:

PlEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this 6th day of April, 1984, for review as to form and legality. Pursuant to 1 MCAR § 1.206C., the Attorney General will not approve the rules for at least eight calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

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STATE OF MINNESOTA
DEPARTMENT OF REVENUE

Luci A. Mitchell

LUCI A. MITCHELL, Attorney
Commissioner's Staff