

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1184 05 0009 6736.

7/12 Sims to send 4 copies of Rules as adopted

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-9-85
DATE FOR REVIEW 7-18-85
DATE DUE 7-23-85

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

Approved 7-23-85 JMM Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 7-30-85 Revisor approved _____ disapproved _____

_____ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.25.85 Date

N/A 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 minor deviation from 14.22 – no "encouragement" no small biz statement

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

✓ Mailing list Certificate

✓ Publication in State Register
3.11.85 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

N/A 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 contains small biz statement – will impact.

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

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Telephone: (612) 297-4058

July 15, 1985

Office of the Attorney General
204 Administration Building
St. Paul, Minnesota 55155

Attention: Judith Wehrwein

Dear Ms. Wehrwein:

As per our telephone conversation today, enclosed is the original and three copies of the Department of Revenue's Adopted Rule Governing Multistate Tax Compact.

Please note that the Rule as Adopted includes a typographical correction at page 3 line 18.

Sincerely,

Harriet J. Sims

Harriet J. Sims, Attorney
Corporate Income Tax Division
Post Office Box 64452
St. Paul, Minnesota 55164

HJS:tml

Enclosures

RECEIVED
JUL 16 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Telephone: (612) 297-4058

July 2, 1985

RECEIVED
JUL 8 1985
ATTORNEY GENERAL'S OFFICE
REVENUE DIVISION
2nd FLOOR, CENTENNIAL BLDG
ST. PAUL, MN 55155

Office of Attorney General
Room 102 Capitol Building
Aurora Avenue
St. Paul, Minnesota 55155

Re: Adoption of New Rules Relating to the Taxation of a Unitary Business and Formulary Apportionment Under the Multistate Tax Compact (Minnesota Rules Part 8017.5000).

Dear Sir:

In accordance with Minnesota Statutes Section 14.26 the following documents are enclosed for your review:

1. Rule as adopted (original and three copies) with one amendment.

2. Order Adopting (two copies).

3. Order for Notice of Intent to Adopt an Income Tax Rule of the Department Without a Public Hearing.

4. Notice of Intent to Adopt an Income Tax Rule Without a Public Hearing.

5. Affidavits of Mailing (Notice of Intent to Adopt a rule Without a Public Hearing).

6. Certificate of Completeness and Accuracy (Mailing List Certificate).

7. Copy of March 11, 1985 State Register in which the rule was published.

8. Statement of Need and Reasonableness.

9. Written comments on the rule or requests for public hearing received by the agency.

RECEIVED
JUL 09 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

10. Certificate of Compliance with Rulemaking Procedure.

The Department received one written comment regarding the adoption of this rule and one request for a hearing. Please contact the undersigned if there are any questions.

Sincerely,

Harriet J. Sims

Harriet J. Sims, Attorney
Corporate Income Tax Division
Post Office Box 64452
St. Paul, Minnesota 55164

HJS:tml

Enclosures

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: ARTHUR C. ROEMER, Commissioner
Department of Revenue

DATE: 7-29-85

ATTN: HARRIET J. SIMS
Corporation Income Tax Attorney

FROM: J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of New Rules Relating to the Taxation of a Unitary Business and Formulary Apportionment Under the Multistate Tax Compact (Minnesota Rules Part 8017.5000).

The above-referenced rule has been approved as to its legality by the Attorney General on July 23, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM(sz)

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Revenue

Adopted Rule Governing Multistate Tax Compact

Rule as Adopted

8017.5000 THE MULTISTATE TAX COMPACT.

Subpart 1. **In general.** Taxpayers who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, are subject to the following regulations as found in Multistate Tax Commission Allocation and Apportionment Regulations, revised February 21, 1973, which is incorporated by reference. Copies of the regulations are available at the Minnesota State Law Library, 117 University Avenue, Saint Paul, MN 55155, and other law libraries. The regulations have also been printed in State and Local Taxes, volume 1, All States Unit, Prentice Hall, Inc., Englewood Cliffs, New Jersey. All references to Article IV refer to Minnesota Statutes, section 290.171, article IV. Taxpayers who elect to apportion their income to Minnesota pursuant to Minnesota Statutes, chapter 290, without regard to Minnesota Statutes, section 290.171, article IV, are subject to Minnesota Rules, chapter 8019.

A. Regulation IV.1.(a), except that references to Regulations IV.1.(c) and IV.1.(b) shall be deleted;

B. Regulation IV.1.(d);

C. Regulation IV.2.(a)(1), in which case "taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state;

D. Regulation IV.2.(a)(2);

E. Regulation IV.2.(a)(3);

F. Regulation IV.2.(a)(4);

G. Regulation IV.2.(b)(1), except that the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be

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determined in accordance with Minnesota Statutes, section 290.171, article IV.4 to IV.12;

H. Regulation IV.2.(b)(2), except that the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing and except that "Article IV.9 to IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.4 to IV.12";

I. Regulation IV.2.(b)(3), except that "Article IV.4. to IV.8" is amended to read "Minnesota Statutes, section 290.171, article IV." Nonbusiness income shall be allocated in accordance with Minnesota Statutes, sections 290.17 and 290.19;

J. Regulation IV.2.(c);

K. Regulation IV.3.(a);

L. Regulation IV.3.(b), except that the term "tax administrator" is amended to read "commissioner of revenue" wherever it occurs;

M. Regulation IV.3.(c);

N. Regulation IV.9, except that "Article IV.9" is amended to read "Minnesota Statutes, section 290.171, article IV.4";

O. Regulation IV.10.(a);

P. Regulation IV.10.(b);

Q. Regulation IV.10.(c);

R. Regulation IV.10.(d);

S. Regulation IV.11.(a);

T. Regulation IV.11.(b);

U. Regulation IV.12;

V. Regulation IV.13.(a);

W. Regulation IV.13.(b);

X. Regulation IV.13.(c), except that "Article IV.14" is amended to read "Minnesota Statutes, section 290.171, article IV.9";

Y. Regulation IV.14;

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OFFICE BY:

Z. Regulation IV.15.(a), except that in paragraph (1) "paragraphs (5) through (8) of Article IV" is amended to read "Minnesota Statutes, section 290.171, article IV";

AA. Regulation IV.15.(b);

BB. Regulation IV.15.(c);

CC. Regulation IV.16.(a);

DD. Regulation IV.16.(b);

EE. Regulation IV.17, except that in paragraph (1) "Article IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.12";

FF. Regulation IV.18.(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article IV.13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12";

GG. Regulation IV.18.(b); and

HH. Regulation IV.18.(c).

Subp. 2. **Construction contractors.** Long-term construction contractors who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to the Multistate Tax Commission Construction Contractor Regulation IV.18.(d), adopted July 10, 1980, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1." is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8" is amended to read "Minnesota Statutes, section 290.171, article IV";

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for

determining business and nonbusiness income see Regulation IV.1.(a) and (d)."

D. Clause (3), Methods of accounting and year of inclusion, is amended to read: "For general rules of accounting, definitions, and methods of accounting for long-term construction contracts see Minnesota Statutes, sections 290.01, subdivision 20, and 290.07."

E. In paragraph (4)(iv), "Article IV.10 to .12 inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .7 inclusive."

F. In paragraph (4)(v), "Article IV.13 and .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8 and .9."

G. In paragraph (4)(vi), the reference to "Article IV.15 - .17 inclusive" is amended to read "Article IV.10 - .12, inclusive of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171."

Subp. 3. **Railroads.** Railroads which elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to Regulation IV.18.(f), adopted July 16, 1981, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1" is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8, inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV."

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.(a) and (d)."

D. In clause (3)(ii)A, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

E. In clause (3)(ii)B.3, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

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F. In clause (3)(ii)B.4, "Article IV.12" is amended to read "Minnesota Statutes, section 290.171, article IV.7."

G. In clause (3)(ii)B.5, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

H. In clause (3)(ii)C., "Article IV.10 - .12 inclusive," is amended to read "Minnesota Statutes, section 290.171, article IV.5-.7, inclusive."

I. In clause (3)(ii)C.(iii), "Article IV.13 - .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8-.9."

J. In the second paragraph of clause (3)(ii)C.(iv)A., "Article IV.15 - .17" is amended to read "Minnesota Statutes, section 290.171, article IV.10-.12."

APPROVED BY THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 30 1985
Joan Anderson Growe
Secretary of State

8:50 AM

APPROVED AS TO FORM AND LEGALITY

7/23 19 85

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

Rule as Proposed (all new material)

8017.5000 THE MULTISTATE TAX COMPACT.

Subpart 1. In general. Taxpayers who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, are subject to the following regulations as found in Multistate Tax Commission Allocation and Apportionment Regulations, revised February 21, 1973, which is incorporated by reference. Copies of the regulations are available at the Minnesota State Law Library, 117 University Avenue, Saint Paul, MN 55155, and other law libraries. The regulations have also been printed in State and Local Taxes, volume 1, All States Unit, Prentice Hall, Inc., Englewood Cliffs, New Jersey. All references to Article IV refer to Minnesota Statutes, section 290.171, article IV. Taxpayers who elect to apportion their income to Minnesota pursuant to Minnesota Statutes, chapter 290, without regard to Minnesota Statutes, section 290.171, article IV, are subject to Minnesota Rules, chapter 8019.

A. Regulation IV.1.(a), except that references to Regulations IV.1.(c) and IV.1.(b) shall be deleted;

B. Regulation IV.1.(d);

C. Regulation IV.2.(a)(1), in which case "taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state;

D. Regulation IV.2.(a)(2);

E. Regulation IV.2.(a)(3);

F. Regulation IV.2.(a)(4);

G. Regulation IV.2.(b)(1), except that the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined in accordance with Minnesota Statutes, section 290.171, article IV.4 to IV.12;

H. Regulation IV.2.(b)(2), except that the combined report shall reflect income only from corporations created or

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organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing and except that "Article IV.9 to IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.4 to IV.12";

I. Regulation IV.2.(b)(3), except that "Article IV.4. to IV.8" is amended to read "Minnesota Statutes, section 290.171, article IV." Nonbusiness income shall be allocated in accordance with Minnesota Statutes, sections 290.17 and 290.19;

J. Regulation IV.2.(c);

K. Regulation IV.3.(a);

L. Regulation IV.3.(b), except that the term "tax administrator" is amended to read "commissioner of revenue" wherever it occurs;

M. Regulation IV.3.(c);

N. Regulation IV.9, except that "Article IV.9" is amended to read "Minnesota Statutes, section 290.171, article IV.4";

O. Regulation IV.10.(a);

P. Regulation IV.10.(b);

Q. Regulation IV.10.(c);

R. Regulation IV.10.(d);

S. Regulation IV.11.(a);

T. Regulation IV.11.(b);

U. Regulation IV.12;

V. Regulation IV.13.(a);

W. Regulation IV.13.(b);

X. Regulation IV.13.(c), except that "Article IV.14" is amended to read "Minnesota Statutes, section 290.171, article IV.9";

Y. Regulation IV.14;

Z. Regulation IV.15.(a), except that in paragraph (1) "paragraphs (5) through (8) of Article IV" is amended to read "Minnesota Statutes, section 290.171, article IV";

AA. Regulation IV.15.(b);

BB. Regulation IV.15.(c);

CC. Regulation IV.16.(a);

DD. Regulation IV.16.(b);

EE. Regulation IV.17, except that in paragraph (1) "Article IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.12";

FF. Regulation IV.18.(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article 13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12";

GG. Regulation IV.18.(b); and

HH. Regulation IV.18.(c).

Subp. 2. **Construction contractors.** Long-term construction contractors who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to the Multistate Tax Commission Construction Contractor Regulation IV.18.(d), adopted July 10, 1980, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1." is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8" is amended to read "Minnesota Statutes, section 290.171, article IV";

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income see Regulation IV.1.(a) and (d)."

D. Clause (3), Methods of accounting and year of inclusion, is amended to read: "For general rules of

accounting, definitions, and methods of accounting for long-term construction contracts see Minnesota Statutes, sections 290.01, subdivision 20, and 290.07."

E. In paragraph (4)(iv), "Article IV.10 to .12 inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .7 inclusive."

F. In paragraph (4)(v), "Article IV.13 and .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8 and .9."

G. In paragraph (4)(vi), the reference to "Article IV.15 - .17 inclusive" is amended to read "Article IV.10 - .12, inclusive of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171."

Subp. 3. **Railroads.** Railroads which elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to Regulation IV.18.(f), adopted July 16, 1981, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1" is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8, inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV."

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.(a) and (d)."

D. In clause (3)(ii)A, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

E. In clause (3)(ii)B.3, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

F. In clause (3)(ii)B.4, "Article IV.12" is amended to read "Minnesota Statutes, section 290.171, article IV.7."

G. In clause (3)(ii)B.5, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

H. In clause (3)(ii)C., "Article IV.10 - .12 inclusive," is amended to read "Minnesota Statutes, section 290.171, article IV.5-.7, inclusive."

I. In clause (3)(ii)C.(iii), "Article IV.13 - .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8-.9."

J. In the second paragraph of clause (3)(ii)C.(iv)A., "Article IV.15 - .17" is amended to read "Minnesota Statutes, section 290.171, article IV.10-.12."

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD439

Agency: Department of Revenue

Division:

Agency Contact: Harriet Sims 297-4058

Minnesota Rules: Part 8017.5000

Title: Proposed Rule Governing Multistate Tax Compact

Type of Rules: Permanent

Incorporations by Reference:

Rule Number:	Material Incorporated:
8017.5000	Multistate Tax Commission Allocation and Appointment Regulations

Steven C. Cross
Revisor of Statutes

Janet C. Rahm
Assistant Revisor
Phone: 296-0952
Date: August 24, 1984

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX DIVISION

IN THE MATTER of the Proposed Adoption of New Rules Relating to the Taxation of a Unitary Business and Formulary Apportionment Under the Multistate Tax Compact (Minnesota Rules Part 8017.5000)

ORDER ADOPTING RULE

Notice of the Commissioner's intent to adopt a corporate income tax rule of the Department of Revenue relating to the taxation of a unitary business and formulary apportionment under the Multistate Tax Compact (Minnesota Rules Part 8017.5000) was published in the State Register on March 11, 1985 and was sent by the United States mail or interoffice mail where appropriate to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1. After affording and encouraging interested and affected persons an opportunity to submit comments for thirty (30) days after notice, and receiving only one written request for a public hearing within the thirty (30) day comment period, I have determined the need for and reasonableness of the above-captioned proposed rule. One amendment to the rule as it appeared in the State Register is proposed.

NOW, THEREFORE, IT IS ORDERED that the proposed rule relating to the taxation of a unitary business and formulary apportionment under the Multistate Tax Compact (Minnesota Rules Part 8017.5000) is adopted the 25th day of June, 1985 pursuant to the authority vested in me by Minnesota Statutes, section 290.52 with the following amendment:

Rules as Adopted

8017.5000 The Multistate Tax Compact

Subpart 1. FF. Regulation IV.18(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article IV.13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12."

STATE OF MINNESOTA

Arthur C. Roemer

ARTHUR C. ROEMER
Commissioner of Revenue

ACR:Gul

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX DIVISION

IN THE MATTER of the Proposed Rule Relating to the Multistate Tax Commission Allocation and Apportionment Provisions (Minnesota Rules Part 8017.5000)

Order for Notice of Intent to Adopt Rules without Public Hearing

It is ordered this 28th day of February 1985 that Notice of Intent to Adopt a Rule Without Public Hearing in the above entitled matter be given to all persons who have registered their names with the 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

SP:V20
Rev: 2/85

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX DIVISION

IN THE MATTER of the Proposed Rule Relating to the Multistate Tax Compact (Minnesota Rules Part 8017.500)

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to adopt Minnesota Rules Part 8017.5000, Multistate Tax Compact without a public hearing. The Commissioner of Revenue 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, Section 14.21 to 14.28.

Minnesota Statutes, Sections 290.171 to 290.174 adopt provisions of the Multistate Tax Compact. Corporations which elect to have their income apportioned according to the Multistate Tax Compact formula need a set of rules to explain the formula. The Commissioner is, therefore, proposing to incorporate by reference the Multistate Tax Commission Allocation and Apportionment Regulations for use by taxpayers whose income is determined under Minnesota Statutes, Section 290.171, Article IV.

1. A 30-day comment period commencing from the date of publication of this notice is established. The Department of Revenue encourages all interested persons to submit comments in support of or opposition to the proposed rule. Comments should be mailed to the address listed below.

2. Each comment should identify the portion of the rule addressed, the reason for the comment and any proposed change(s).

3. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held.

4. Any interested person may request a public hearing by writing to the address listed below. The request must contain the name and address of the person requesting the hearing. Any person requesting a hearing may also identify the portion of the proposed rule addressed, the reason for the hearing request and any proposed change(s) in the rule.

5. This proposed rule may be modified if the modifications are supported by the data and views submitted.

6. Copies of the proposed rule and a Statement of Need and Reasonableness which describes the need for and reasonableness of the Rule and identifies the data and information relied upon to support the proposed rule, are available. Persons who wish to submit written comments, request that a public hearing be held, request a copy of the Statement of Need and Reasonableness or request a free copy of the rule should contact:

Harriet J. Sims, Attorney
Corporation Income Tax Division
Minnesota Department of Revenue
Corporation Income Tax Division
P. O. Box 64452
St. Paul, MN 55145
(612) 297-4058

6. Upon adoption as the final rule without 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 Ms. Sims.

The proposed rule is summarized as follows:

1. Part 8017.5000, Subpart 1 states that when a taxpayer's income is apportioned under the allocation and apportionment provisions of the Multistate Tax Compact the taxpayer will be subject to the enumerated Multistate Tax Commission (MTC) allocation and apportionment provisions which have been incorporated by reference in proposed Minnesota Rules, Part 8017.5000. Taxpayers who elect not to have their income taxed under the Multistate Tax Compact will not be subject to the proposed rule.

2. Part 8017.5000, Subp. 1, Item A, incorporates MTC Regulation IV.1(a), which defines business income.

3. Part 8017.5000, Subp. 1, Item B, incorporates Regulation IV.1(d), which explains how deductions are treated.

4. Part 8017.5000, Subp. 1, Item C, incorporates Regulation IV.2(a)(1), which defines "taxpayer."

5. Part 8017.5000, Subp. 1, Item D, incorporates Regulation IV.2(a)(2), which defines "apportionment."

6. Part 8017.5000, Subp. 1, Item E, incorporates Regulation IV.2 (a)(3), which defines "allocation."

7. Part 8017.5000, Subp. 1, Item F, incorporates Regulation IV.2(a)(4), which defines "business activity."

8. Part 8017.5000, Subp. 1, Item G, incorporates Regulation IV.2(b)(c), which provides that if a taxpayer does business within and without Minnesota and is also taxable in another state, it may use the Uniform Division of Income for Tax Purposes Act (UDITPA) as adopted in Minnesota Statutes, Section 290.171, Article IV to determine its Minnesota income.

9. Part 8017.5000, Subp. 1, Item H, incorporates Regulation IV.2(b)(2), which allows the use of a combined report. The Regulation has been amended to prohibit worldwide reporting.

10. Part 8017.5000, Subp. 1, Item I, incorporates Regulation IV.2(b)(g) and amends it so that nonbusiness income is allocated in accordance with Minnesota Statutes, Section 290.171, Article IV.

11. Part 8017.5000, Subp. 1, Item J, incorporates Regulation IV.2(c), which requires taxpayers to treat business and nonbusiness income consistently from year to year.

12. Part 8017.5000, Subp. 1, Item K, incorporates Regulation IV.3(a), which sets out criteria for determining whether a taxpayer is taxable in another state.

13. Part 8017.5000, Subp. 1, Item L, incorporates Regulation IV.3(b), which sets out criteria for determining whether a taxpayer is "subject to" tax in another state.

14. Part 8017.5000, Subp. 1, Item M, incorporates Regulation IV.3(c), which provides that a taxpayer is taxable in another state if the taxpayer has nexus with that state.

15. Part 8017.5000, Subp. 1, Item N, incorporates Regulation IV.9, which, as amended, provides that business income is apportioned to Minnesota by use of the three-factor apportionment formula of Minnesota Statutes, Section 290.171, Article IV.

16. Part 8017.5000, Subp. 1, Item O, incorporates Regulation IV.10(a), which provides that the property factor involves all real and tangible personal property owned and rented by the taxpayer and used in the regular course of the taxpayer's business.

17. Part 8017.5000, Subp. 1, Item P, incorporates Regulation IV.10(b), which explains what property is included in the property factor.

18. Part 8017.5000, Subp. 1, Item Q, incorporates Regulation IV.10(c), which requires the taxpayer to use a consistent method of valuing property or including or excluding it from the property factor.

19. Part 8017.5000, Subp. 1, Item R, incorporates Regulation IV.10(d), which provides rules for valuing real and tangible personal property.

20. Part 8017.5000, Subp. 1, Item S, incorporates Regulation IV.11(a), which provides that owned property is valued at original cost.

21. Part 8017.5000, Subp. 1, Item T, incorporates Regulation IV.11(b), which deals with rented property.

22. Part 8017.5000, Subp. 1, Item U, incorporates Regulation IV.12, which provides that the average value of property is determined by averaging the values at the beginning and ending of the period.

23. Part 8017.5000, Subp. 1, Item V, incorporates Regulation IV.13(a), which deals with the payroll factor.

24. Part 8017.5000, Subp. 1, Item W, incorporates Regulation IV.13(b), which states that the denominator of the payroll factor consists of total compensation paid everywhere. The Regulation is amended so that compensation paid is limited to compensation paid in the United States, the commonwealth of Puerto Rico or any possession of the United States.

25. Part 8017.5000, Subp. 1, Item X, incorporates Regulation IV.13(c), which provides that the numerator of the payroll factor is the total amount paid in Minnesota by the taxpayer for compensation.

26. Part 8017.5000, Subp. 1, Item Y, incorporates Regulation IV.14, which sets out several tests used to determine whether compensation (wages, salaries) are paid in Minnesota.

27. Part 8017.5000, Subp. 1, Item Z, incorporates Regulation IV.15(a), which sets out rules for determining what is included in sales, for purposes of the sales factor.

28. Part 8017.5000, Subp. 1, Item AA, incorporates Regulation IV.15(b), which deals with the denominator of the sales factor.

29. Part 8017.5000, Subp. 1, Item BB, incorporates Regulation IV.15(c), which deals with the numerator of the sales factor.

30. Part 8017.5000, Subp. 1, Item CC, incorporates Regulation IV.16(a), which defines sales of tangible personal property and provides examples.

31. Part 8017.5000, Subp. 1, Item DD, incorporates Regulation IV.16(b), which deals with sales of tangible personal property to the U. S. Government,

32. Part 8017.5000, Subp. 1, Item EE, incorporates Regulation IV.17, which explains how gross receipts from transactions other than sales of tangible personal property are treated for purposes of determining the sales factor.

33. Part 8017.5000, Subp. 1, Item FF, incorporates Regulation IV.18(a), which permits the use of other methods of apportionment if the allocation and apportionment methods of Article IV do not fairly represent the taxpayer's business activities in Minnesota. The Regulation is amended so that worldwide apportionment is not permitted.

34. Part 8017.5000, Subp. 1, Item GG, incorporates Regulation IV.18(b), which provides that if subrents taken into account in determining the net annual rental rate produce a negative or inaccurate value another method which properly reflects the value of rented property may be required by the commissioner or requested by the taxpayer.

35. Part 8017.5000, Subp. 1, Item HH, incorporates Regulation IV.18(c), which provides special rules for determining the sales factor in the case of incidental or occasional sales of fixed assets in the regular course of the taxpayer's business.

36. Part 8017.5000, Subp. 2, Items A-G, incorporates Regulation IV.18(d), which provides special rules for long term construction contractors. Construction contractors doing business within and without Minnesota determine their Minnesota income by use of a three-factor formula. The Regulation provides rules and examples.

37. Part 8017.5000, Subp. 3, Items A-J, incorporates Regulation IV.18(f), which provides special rules for railroads.

The agency's authority to adopt the proposed new rule is contained in Minnesota Statutes, section 290.52.

The agency estimates that there will be no cost to local public bodies in the state to implement the rule for the next two years within the meaning of Minnesota Statute, Section 14.11, Subp. 1.

The entire text of the proposed Rule is attached to this notice.

Arthur C. Roemer

Arthur C. Roemer
Commissioner of Revenue

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX DIVISION

IN THE MATTER of the Proposed Rules Relating to the Taxation of a Unitary Business and Formulary Apportionment Under the Multistate Tax Compact (Minnesota Rules Part 8017.5000)

AFFIDAVIT

Harriet J. Sims, being first duly sworn, deposes and says:

That on the first day of March, 1985 at the City of St. Paul, County of Ramsey, State of Minnesota, she personally received the list of persons, associations and other interested groups who had registered with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules. A copy of this list is attached.

Harriet J. Sims
Harriet J. Sims

Subscribed and sworn before me
this 28th day of June, 1985.

Diane C. Walsh
Notary Public

DIANE C. WALSH
NOTARY PUBLIC MINNESOTA
My Commission Expires July 27, 1985
RAMSEY COUNTY

HJS:Gum

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX DIVISION

IN THE MATTER OF THE PROPOSED
ADOPTION OF NEW RULES RELATING
TO THE TAXATION OF A UNITARY
BUSINESS AND FORMULARY
APPORTIONMENT UNDER THE
MULTISTATE TAX COMPACT
(MINNESOTA RULES PART 8017.5000)

A F F I D A V I T

I, Tamara Lurken, being first duly sworn deposes and says: That on the 8th day of March, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the Notice of Intent to Adopt a Rule Without a Public Hearing in the matter of the proposed adoption of an income tax rule of the Department of Revenue by depositing in the United States Mail, or in the State of Minnesota interoffice mail service where appropriate, at the City of St. Paul, a true and correct copy of the Notice, properly enveloped, with postage prepaid, to all persons and associations at the address listed on that attached list.

Tamara Lurken
Tamara Lurken

Subscribed and sworn before me
this 8th day of March, 1985.

Diane C. Walsh
Notary Public

DIANE C. WALSH
NOTARY PUBLIC - MINNESOTA
My Commission Expires July 27, 1985
RAMSEY COUNTY

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF NEW RULES RELATING TO THE TAXATION OF A UNITARY BUSINESS AND FORMULARY APPORTIONMENT UNDER THE MULTISTATE TAX COMPACT (MINNESOTA RULES PART 8017.5000)

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached pages number 1 through 29 consisting of 331 typewritten names and addresses constitute the complete list of persons, associations and other interested groups who, as of 8 o'clock a.m., this 1st day of March, 1985, have requested pursuant to Minn. Stat. Section 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
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COMMISSIONER OF REVENUE

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Donna Walbridge
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Sauk Centre, MN 56378

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720 South Colorado Blvd. #570
Denver, CO 80012
Attn: Mr. Pete Stroup

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P. O. Box 88
Montevideo, MN 56265
Attn: Bookkeeper

Midwest Electric Products, Inc.
P. O. Box 910
Mankato, MN 56001
Attn: Mr. Gerald W. Poppe

Charles Miller
Accounting Services
215 W. Holmes
Detroit Lakes, MN 56501

Minneapolis Tribune
425 Portland Avenue
Minneapolis, MN 55488
Attn: Bob Franklin, City Editor

Minnegasco, Inc.
201 South 7th Street
Minneapolis, MN 55402
Attn: Myron C. Martin

Minnesota Bankers Association
332 Baker Building
Minneapolis, MN 55402
Attn: John S. Jackson
General Counsel

MN Chapter of Associated Builders &
Contractors, Inc.
6300 Walker Street, Ste. 109
(Hwy 7 at Woodale)
Minneapolis, MN 55416
Attn: Donald E. Montgomery, Exec. Director

MN Dept. of Economic Development
480 Cedar Street
St. Paul, MN 55101
Attn: Richard C. Buske

MN Dept. of Economic Development
480 Cedar Street
St. Paul, MN 55101
Attn: Kent E. Eklund, Commissioner

MN Dept. of Economic Development
480 Cedar Street
St. Paul, MN 55101
Attn: Charles Schaffer

MN Department of Economic Security
690 American Center Building
150 E. Kellogg Boulevard
St. Paul, MN 55101
Attn: F. James Rybak, PhD.

The MN Government Report
B-12, Press Room
State Capitol
St. Paul, MN 55155
Attn: Jean Dawson, Editor

Minn. Higher Ed. Coord. Board
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550 Cedar Street
St. Paul, MN 55101
Attn: Mary Samoszuk
Admin. Asst. to Exec. Dir.

MN Manufactured Housing Assoc.
222 E Little Canada Rd, Ste. 222
Little Canada, MN 55117
Attn: John T. Farmer, Exec. Dir.

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R. W. Brust, Vice Pres. Taxes
3M Center - 220 Thirteen West
St. Paul, MN 55144

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St. Paul, MN 55133

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St. Paul, MN 55104
Attn: Mr. James N. Denn

Minn. Multi-Housing Ass'n.
3100 West Lake Street
Minneapolis, MN 55416
Attn: John G. Horner

Minnesota Petroleum Council
300 Northern Federal Building
St. Paul, MN 55102

Minnesota Power & Light Company
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Duluth, MN 55802
Attn: Bruce E. Gangnon
Manager - Taxes

MN Railroads Association
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St. Paul, MN 55101
Attn: Gordon Forbes

MN Tax Journal
971 Goodrich
St. Paul, MN 55105
Attn: Larry Celander

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St. Paul, MN 55101
Don G. Paterick
Attn: Executive Director

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Attn: Abe Rosenthal, Executive Vice President

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Monticello, MN 55362

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Golden Valley, MN 55427

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Minneapolis, MN 55435
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Minneapolis, MN 55412
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Webster, MN 55088

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P. O. Box 43189
1678 Red Rock Road
St. Paul, MN 55164
Attn: R. A. Garvey
Vice President/General Manager

Northern Mining Equipment Co.
E. Highway 37, Box 6
Hibbing, MN 55746

Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401
Attn: Robert J. Dolan
Manager Property Tax

Northwestern Bell Co.
100 South 19th St.
Room 760 Dodge
Omaha, NE 68102
Attn: Dan Kotinek, Staff Manager
State and Local Taxes

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Sam Ruhle
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310 South Fourth Avenue
Minneapolis, MN 55415

Office of the Legislative Auditor
Program Evaluation Division
lst Floor, Veterans Service Building
St. Paul, MN 55155

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St. Paul, MN 55117

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Wyoming, MN 55092

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730 Second Avenue South
Minneapolis, MN 55402
Attn: David R. Knodell, Esq.

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707 E. Minnehaha Avenue
St. Paul, MN 55165
Attn. Tax Department

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Shepard & Donnelly
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1818 Swift Drive
Oak Brook, IL 60521

John C. Ostdiek
17816 Suan Lane
Minnetonka, MN 55343

Otter Tail Power Co.
215 S. Cascade St.
Fergus Falls, MN 56537
Attn: Betty Coleman, Tax Accountant

Parts Service Company
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Mankato, MN 56001

Patchin Contracting
319 So. Dewey Street
Fairmont, MN 56031
Attn: H. W. Patchin

Patten Building Supply
Box 959
Winnebago, MN 56098

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Attn: Terry Wightman, Controller

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St. Paul, MN 55103

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Ste. 811, 200 W. Superior St.
Duluth, MN 55802
Attn: P. D. Brick

Pickands Mather & Co.
1100 Superior Avenue
Cleveland, OH 44114
Attn: T. J. Manthey

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323 E. Blue Earth
Fairmont, MN 56031

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Director of Taxation

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Des Moines, IA 50308
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Attn: R. Jerry Alba
Planning Coordinator
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Production Credit
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Fergus Falls, MN 56537

Professional Instruments Co.
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Washington, D.C. 20005
Attn: Regulatory Department

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Corp. Law Department
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Walnut Grove
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Sevenich, Butler, Gerlach & Brazil, Ltd.
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Shelly's Chips & Paints
918 South Dellwood Street
Cambridge, MN 55008

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White Bear Lake, MN 55110

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Minneapolis, MN 55406
Attn: Mrs. Harper R. Wilcos, Financial Sec.

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L. A. Klepperich
444 Lafayette Road
St. Paul, MN 55101

Frank M. Srdar & Associates
7545 16th Avenue South
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Spartan Mechanical, Inc.
9801 Valley View Road
Eden Prairie, MN 55344
Attn: John Pierson, Sec. - Treas.

Springsteel Resort and Marina, Inc.
Warroad, MN 56763
Attn. Dick Soderberg

Standard Upholstering Co., Inc.
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Minneapolis, MN 55408
Attn: Maurice L. Londer

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Lawrence Mahoney
2010 North Central Life Tower
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St. Paul, MN 55101

Stiles Stores, Inc.
P. O. Box 1068
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Waukegan, IL 60085

Super Valu Stores, Inc.
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Corporate Tax Manager

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Cedar, MN 55011

Tax-MEN, Inc.
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Hopkins, MN 55343
Attn: James C. Berger, Vice President

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Arlington, MN 55307

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Buffalo, MN 55313
Attn: Mr. Harold Tenney

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P. O. Box 16423
Denver, CO 80216
Attn: Steven M. Alexander

Touche Ross & Co.
900 Pillsbury Center
Minneapolis, MN 55402
Attn: Mark A. Sellner

Tri-County Community Action
Program, Inc.
404 NE 2nd Avenue
Little Falls, MN 56345
Attention: Mark G. Sexton, Planner

Tri-Mac Building Supply, Inc.
571 East Fourth Street
Winona, MN 55987
Attn: Don McNally

TRW Cinch Connectors
Electronic Components Div.
1501 Morse Avenue
Elk Grove Village, IL 60007
Attn: General Accounting Mgr.

Tuscargra Lodge & Outfitters
Gunflint Trail
Grand Marais, MN 55604

Tushner's Market, Inc.
501 E. Third Street
Winona, MN 55987

University of Minnesota
271 19th Avenue S.
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White Motor-Hopkins
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Attn: Paul M. Leegard
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Winona, MN 55987
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Crookston, MN 56716

Wolverton Farmers Elevator
Wolverton, MN 56594

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Olivia, MN 56277

Department of Revenue

Proposed Rule Governing Multistate Tax Compact

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to adopt Minnesota Rules Part 8017.5000, Multistate Tax Compact without a public hearing. The Commissioner of Revenue 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, Section 14.21 to 14.28.

Minnesota Statutes, Sections 290.171 to 290.174 adopt provisions of the Multistate Tax Compact. Corporations which elect to have their income apportioned according to the Multistate Tax Compact formula need a set of rules to explain the formula. The Commissioner is, therefore, proposing to incorporate by reference the Multistate Tax Commission Allocation and Apportionment Regulations for use by taxpayers whose income is determined under Minnesota Statutes, Section 290.171, Article IV.

1. A 30-day comment period commencing from the date of publication of this notice is established. The Department of Revenue encourages all interested persons to submit comments in support of or opposition to the proposed rule. Comments should be mailed to the address listed below.

2. Each comment should identify the portion of the rule addressed, the reason for the comment and any proposed change(s).

3. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held.

4. Any interested person may request a public hearing by writing to the address listed below. The request must contain the name and address of the person requesting the hearing. Any person requesting a hearing may also identify the portion of the proposed rule addressed, the reason for the hearing request and any proposed change(s) in the rule.

5. This proposed rule may be modified if the modifications are supported by the data and views submitted.

6. Copies of the proposed rule and a Statement of Need and Reasonableness which describes the need for and reasonableness of the Rule and identifies the data and information relied upon to support the proposed rule, are available. Persons who wish to submit written comments, request that a public hearing be held, request a copy of the Statement of Need and Reasonableness or request a free copy of the rule should contact:

Harriet J. Sims, Attorney
Corporation Income Tax Division
Minnesota Department of Revenue
Corporation Income Tax Division
P.O. Box 64452
St. Paul, MN 55145
(612) 297-4058

7. Upon adoption as the final rule without 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 Ms. Sims.

The proposed rule is summarized as follows:

1. Part 8017.2500, Subpart 1 states that when a taxpayer's income is apportioned under the allocation and apportionment provisions of the Multistate Tax Compact the taxpayer will be subject to the enumerated Multistate Tax Commission (MTC) allocation and apportionment provisions which have been incorporated by reference in proposed Minnesota Rules, Part 8017.5000. Taxpayers who elect not to have their income taxed under the Multistate Tax Compact will not be subject to the proposed rule.

2. Part 8017.5000, Subp. 1, Item A, incorporates MTC Regulation IV.1(a), which defines business income.

3. Part 8017.5000, Subp. 1, Item B, incorporates Regulation IV.1(d), which explains how deductions are treated.

4. Part 8017.5000, Subp. 1, Item C, incorporates Regulation IV.2(a)(1), which defines "taxpayer."

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.

5. Part 8017.5000, Subp. 1, Item D, incorporates Regulation IV.2(a)(2), which defines "apportionment."

6. Part 8017.5000, Subp. 1, Item E, incorporates Regulation IV.2(a)(3), which defines "allocation."

7. Part 8017.5000, Subp. 1, Item F, incorporates Regulation IV.2(a)(4), which defines "business activity."

8. Part 8017.5000, Subp. 1, Item G, incorporates Regulation IV.2(b)(c), which provides that if a taxpayer does business within and without Minnesota and is also taxable in another state, it may use the Uniform Division of Income for Tax Purposes Act (UDITPA) as adopted in Minnesota Statutes, Section 290.171, Article IV to determine its Minnesota income.

9. Part 8017.5000, Subp. 1, Item H, incorporates Regulation IV.2(b)(2), which allows the use of a combined report. The Regulation has been amended to prohibit worldwide reporting.

10. Part 8017.5000, Subp. 1, Item I, incorporates Regulation IV.2(b)(g) and amends it so that nonbusiness income is allocated in accordance with Minnesota Statutes, Section 290.171, Article IV.

11. Part 8017.5000, Subp. 1, Item J, incorporates Regulation IV.2(c), which requires taxpayers to treat business and nonbusiness income consistently from year to year.

12. Part 8017.5000, Subp. 1, Item K, incorporates Regulation IV.3(a), which sets out criteria for determining whether a taxpayer is taxable in another state.

13. Part 8017.5000, Subp. 1, Item L, incorporates Regulation IV.3(b), which sets out criteria for determining whether a taxpayer is "subject to" tax in another state.

14. Part 8017.5000, Subp. 1, Item M, incorporates Regulation IV.3(c), which provides that a taxpayer is taxable in another state if the taxpayer has nexus with that state.

15. Part 8017.5000, Subp. 1, Item N, incorporates Regulation IV.9, which, as amended, provides that business income is apportioned to Minnesota by use of the three-factor apportionment formula of Minnesota Statutes, Section 290.171, Article IV.

16. Part 8017.5000, Subp. 1, Item O, incorporates Regulation IV.10(a), which provides that the property factor involves all real and tangible personal property owned and rented by the taxpayer and used in the regular course of the taxpayer's business.

17. Part 8017.5000, Subp. 1, Item P, incorporates Regulation IV.10(b), which explains what property is included in the property factor.

18. Part 8017.5000, Subp. 1, Item Q, incorporates Regulation IV.10(c), which requires the taxpayer to use a consistent method of valuing property or including or excluding it from the property factor.

19. Part 8017.5000, Subp. 1, Item R, incorporates Regulation IV.10(d), which provides rules for valuing real and tangible personal property.

20. Part 8017.5000, Subp. 1, Item S, incorporates Regulation IV.11(a), which provides that owned property is valued at original cost.

21. Part 8017.5000, Subp. 1, Item T, incorporates Regulation IV.11(b), which deals with rented property.

22. Part 8017.5000, Subp. 1, Item U, incorporates Regulation IV.12, which provides that the average value of property is determined by averaging the values at the beginning and ending of the period.

23. Part 8017.5000, Subp. 1, Item V, incorporates Regulation IV.13(a), which deals with the payroll factor.

24. Part 8017.5000, Subp. 1, Item W, incorporates Regulation IV.13(b), which states that the denominator of the payroll factor consists of total compensation paid everywhere. The Regulation is amended so that compensation paid is limited to compensation paid in the United States, the commonwealth of Puerto Rico or any possession of the United States.

25. Part 8017.5000, Subp. 1, Item X, incorporates Regulation IV.13(c), which provides that the numerator of the payroll factor is the total amount paid in Minnesota by the taxpayer for compensation.

26. Part 8017.5000, Subp. 1, Item Y, incorporates Regulation IV.14, which sets out several tests used to determine whether compensation (wages, salaries) are paid in Minnesota.

27. Part 8017.5000, Subp. 1, Item Z, incorporates Regulation IV.15(a), which sets out rules for determining what is included in sales, for purposes of the sales factor.

28. Part 8017.5000, Subp. 1, Item AA, incorporates Regulation IV.15(b), which deals with the denominator of the sales factor.

29. Part 8017.5000, Subp. 1, Item BB, incorporates Regulation IV.15(c), which deals with the numerator of the sales factor.

30. Part 8017.5000, Subp. 1, Item CC, incorporates Regulation IV.16(a), which defines sales of tangible personal property and provides examples.

31. Part 8017.5000, Subp. 1, Item DD, incorporates Regulation IV.16(b), which deals with sales of tangible personal property to the U.S. Government.

32. Part 8017.5000, Subp. 1, Item EE, incorporates Regulation IV.17, which explains how gross receipts from transactions other than sales of tangible personal property are treated for purposes of determining the sales factor.

33. Part 8017.5000, Subp. 1, Item FF, incorporates Regulation IV.18(a), which permits the use of other methods of apportionment if the allocation and apportionment methods of Article IV do not fairly represent the taxpayer's business activities in Minnesota. The Regulation is amended so that worldwide apportionment is not permitted.

34. Part 8017.5000, Subp. 1, Item GG, incorporates Regulation IV.18(b), which provides that if subrents taken into account in determining the net annual rental rate produce a negative or inaccurate value another method which properly reflects the value of rented property may be required by the commissioner or requested by the taxpayer.

35. Part 8017.5000, Subp. 1, Item HH, incorporates Regulation IV.18(c), which provides special rules for determining the sales factor in the case of incidental or occasional sales of fixed assets in the regular course of the taxpayer's business.

36. Part 8017.5000, Subp. 2, Items A-G, incorporates Regulation IV.18(d), which provides special rules for long term construction contractors. Construction contractors doing business within and without Minnesota determine their Minnesota income by use of a three-factor formula. The Regulation provides rules and examples.

37. Part 8017.5000, Subp. 3, Items A-J, incorporates Regulation IV.18(f), which provides special rules for railroads.

The agency's authority to adopt the proposed new rule is contained in Minnesota Statutes, section 290.52.

The agency estimates that there will be no cost to local public bodies in the state to implement the rule for the next two years within the meaning of Minnesota Statute, Section 14.11, Subp. 1.

The entire text of the proposed Rule is attached to this notice.

Arthur C. Roemer
Commissioner of Revenue

Rule as Proposed (all new material)

8017.5000 THE MULTISTATE TAX COMPACT.

Subpart 1. In general. Taxpayers who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, are subject to the following regulations as found in Multistate Tax Commission Allocation and Apportionment Regulations, revised February 21, 1973, which is incorporated by reference. Copies of the regulations are available at the Minnesota State Law Library, 117 University Avenue, Saint Paul, MN 55155, and other law libraries. The regulations have also been printed in State and Local Taxes, volume 1, All States Unit, Prentice Hall, Inc., Englewood Cliffs, New Jersey. All references to Article IV refer to Minnesota Statutes, section 290.171, article IV. Taxpayers who elect to apportion their income to Minnesota pursuant to Minnesota Statutes, chapter 290, without regard to Minnesota Statutes, section 290.171, article IV, are subject to Minnesota Rules, chapter 8019.

A. Regulation IV.1.(a), except that references to Regulations IV.1.(c) and IV.1.(b) shall be deleted;

B. Regulation IV.1.(d);

C. Regulation IV.2.(a)(1), in which case "taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state;

D. Regulation IV.2.(a)(2);

E. Regulation IV.2.(a)(3).

F. Regulation IV.2.(a)(4);

G. Regulation IV.2.(b)(1), except that the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined in accordance with Minnesota Statutes, section 290.171, article IV.4 to IV.12;

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.

H. Regulation IV.2.(b)(2), except that the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing and except that "Article IV.9 to IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.4 to IV.12";

I. Regulation IV.2.(b)(3), except that "Article IV.4. to IV.8" is amended to read "Minnesota Statutes, section 290.171, article IV." Nonbusiness income shall be allocated in accordance with Minnesota Statutes, sections 290.17 and 290.19;

J. Regulation IV.2.(c);

K. Regulation IV.3.(a);

L. Regulation IV.3.(b), except that the term "tax administrator" is amended to read "commissioner of revenue" wherever it occurs;

M. Regulation IV.3.(c);

N. Regulation IV.9, except that "Article IV.9" is amended to read "Minnesota Statutes, section 290.171, article IV.4";

O. Regulation IV.10.(a);

P. Regulation IV.10.(b);

Q. Regulation IV.10.(c);

R. Regulation IV.10.(d);

S. Regulation IV.11.(a);

T. Regulation IV.11.(b);

U. Regulation IV.12;

V. Regulation IV.13.(a);

W. Regulation IV.13.(b);

X. Regulation IV.13.(c) except that "Article IV.14" is amended to read "Minnesota Statutes, section 290.171, article IV.9";

Y. Regulation IV.14;

Z. Regulation IV.15.(a), except that in paragraph (1) "paragraphs (5) through (8) of Article IV" is amended to read "Minnesota Statutes, section 290.171, article IV";

AA. Regulation IV.15.(b);

BB. Regulation IV.15.(c);

CC. Regulation IV.16.(a);

DD. Regulation IV.16.(b);

EE. Regulation IV.17, except that in paragraph (1) "Article IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.12";

FF. Regulation IV.18.(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article 13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12";

GG. Regulation IV.18.(b); and

HH. Regulation IV.18.(c).

Subp. 2. Construction contractors. Long-term construction contractors who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to the Multistate Tax Commission Construction Contractor Regulation IV.18.(d), adopted July 10, 1980, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1." is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8" is amended to read "Minnesota Statutes, section 290.171, article IV";

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income see Regulation IV.1.(a) and (d)."

D. Clause (3), Methods of accounting and year of inclusion, is amended to read: "For general rules of accounting, definitions, and methods of accounting for long-term construction contracts see Minnesota Statutes, sections 290.01, subdivision 20, and 290.07."

E. In paragraph (4)(iv), "Article IV.10 to .12 inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .7 inclusive."

F. In paragraph (4)(v), "Article IV.13 and .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8 and .9."

G. In paragraph (4)(vi), the reference to "Article IV.15-.17 inclusive" is amended to read "Article IV.10-.12, inclusive of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171."

Sbp. 3. Railroads. Railroads which elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to Regulation IV.18.(f), adopted July 16, 1981, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1" is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8, inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV."

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.(a) and (d)."

D. In clause (3)(ii)A, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

E. In clause (3)(ii)B.3, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

F. In clause (3)(ii)B.4, "Article IV.12" is amended to read "Minnesota Statutes, section 290.171, article IV.7."

G. In clause (3)(ii)B.5, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

H. In clause (3)(ii)C., "Article IV.10-.12 inclusive," is amended to read "Minnesota Statutes, section 290.171, article IV.5-.7, inclusive."

I. In clause (3)(ii)C.(iii), "Article IV.13-.14" is amended to read "Minnesota Statutes, section 290.171, article IV.8-.9."

J. In the second paragraph of clause (3)(ii)C.(iv)A., "Article IV.15-.17" is amended to read "Minnesota Statutes, section 290.171, article IV.10-.12."

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. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under § 14.18.

Board of Animal Health

Adopted Rules Governing Livestock Sales

The rules proposed and published at *State Register*, Volume 9, Number 11, pages 538-543, September 10, 1984 (9 S.R. 538) are adopted as proposed.

Housing Finance Agency

Adopted Rules Governing the Home Ownership Assistance Fund

The rule proposed and published at *State Register*, Volume 9, Number 23, pages 1234-1235, December 3, 1984 (9 S.R. 1234) is adopted as proposed.

Department of Labor and Industry

Adopted Rule Governing Pipefitters' Fees

The rule proposed and published at *State Register*, Volume 9, Number 20, pages 1033-1035, November 12, 1984 (9 S.R. 1033) is adopted as proposed.

Department of Labor and Industry

Adopted Rules Relating to Volunteer Apprentice Program Administration

The rules proposed and published at *State Register*, Volume 9, Number 21, pages 1090-1097, November 19, 1984 (9 S.R. 1090) are adopted with the following modifications:

Rules as Adopted

5200.0420 MAINTENANCE OF RECORDS.

Subp. 3. Retention and availability of records. Under the state of Minnesota plan for equal employment opportunity in apprenticeship, it is the obligation of the sponsor to keep records as required by the Division of Voluntary Apprenticeship pertaining to individual applicants for apprenticeship whether selected or rejected, for five years and be made available upon request to authorized personnel of the Division of Voluntary Apprenticeship. These records pertaining to applicants must be maintained in a manner that permits identification of minority and female participants.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of New Rules Relating to the Taxation of a Unitary Business and Formulary Apportionment Under the Multistate Tax Compact (Minnesota Rules Part 8017.5000)

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed new rule. It is submitted pursuant to Minnesota Statutes section 14.23 and Minnesota Rules Part 1400.0500 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding income tax rules including corporate income taxes was published in the State Register on January 29, 1979 and again on July 6, 1981. The notices directed persons wishing to be placed on a mailing list of persons wishing to be notified of rule making activities to contact the Department of Revenue. This proposed rule was submitted to people who contacted us, for their comment. In a letter dated January 26, 1984 such people were allowed thirty (30) days in which to submit written comments. No substantive comments have been received.

Impact on Small Business

The impact of this rule on small businesses has been considered. Minnesota Statutes, section 290.171, article IV, which this rule is based on imposes a uniform system of apportionment on all corporations which apportion income under Minnesota Statutes, section 290.171, article IV. It would be contrary to those statutory objectives to establish less stringent compliance, schedules, deadlines or exempt small businesses from any of the statutory requirements. As with other businesses, small businesses

which elect not to have their income apportioned under Minnesota Statues, section 290.171, article IV will not be subject to this rule.

Authority to Adopt Rules

Minnesota Statutes Section 290.52 grants the commissioner of revenue statutory authority to promulgate rules concerning the income tax laws. The Multistate Tax Compact Rule is caused by new law made in Laws 1983, chapter 342, article 16, sections 1-5, codified in Minnesota Statutes, sections 290.171, 290.172, 290.174 and 290.175.

PART 8017.5000 THE MULTISTATE TAX COMPACT

Statement of Need and Reasonableness

Subpart 1. The first sentence makes it clear that when a taxpayer is taxed under the allocation and apportionment provisions of the Multistate Tax Compact (the "Compact"), the taxpayer will be subject to the Multistate Tax Commission (MTC) Allocation and Apportionment Regulations as revised February 21, 1973. The proposed rule incorporates the Multistate Tax Commission Allocation and Apportionment Regulations by reference with changes as noted below.

Because several provisions of the Multistate Tax Compact differ from the apportionment provisions in Minnesota Statutes Section 290.19, the existing rules found in Minnesota Rules Part 8019 are inadequate. In addition, it is anticipated that the majority of taxpayers who elect to use the MTC allocation and apportionment provisions will use them in other states which have also adopted or which follow the Multistate Tax Commission Rules or apportion income under the Uniform Division of Income for Tax Purposes Act (UDITPA). By adopting the same rules as are in effect in other states, taxpayers are offered a method of figuring their taxes which is consistent from state to state. If taxpayers are able to treat their income and factors consistently from state to state, the possibility of double taxation may be avoided without sacrificing full accountability of income.

The second sentence of this subpart informs taxpayers that copies of the Multistate Tax Commission Regulations may be obtained at the Minnesota State Law Library, and other law libraries. The regulations have also been printed in loose leaf services such as Prentice-Hall. Based on the foregoing, copies of the Multistate Tax Commission Apportionment and Allocation Regulations are "conveniently available to the public" pursuant to Minnesota Statutes section 14.07, Subd. 4(b).

In order to avoid confusion between Regulation IV of the Multistate Tax Commission Allocation and Apportionment Regulations, Article IV of the Multistate Tax Compact and Minnesota Statutes, section 290.171, article IV, the fourth sentence explains that all references to "Article IV" are to Minnesota Statutes, section 290.171, article IV.

The last sentence of this subpart states that taxpayers electing under Minnesota Statutes section 290.175 to apportion their income to Minnesota without regard to section 290.171, article IV are subject to Minnesota's existing rules on the taxation of a unitary business found in Minnesota Rules Parts 8017 and 8019.

Item A. This item incorporates MTC Regulation IV.1(a) but deletes references to Regulations IV.1.(c) and IV.1.(d). Regulation IV.1(a) defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property if the acquistion, management and disposition of the property constitute integral parts of the taxpayer's trade or business. In short, business income is all income which arises from the conduct of the taxpayer's trade or business. It is a restatement of the definition in Minnesota Statutes section 290.171, article IV.1.(a). This is consistent with Minnesota's treatment of business income.

Regulations IV.1.(b) and IV.1.(c) are not incorporated. Regulation IV.1.(b) defines what a unitary business is. As Minnesota Statutes section 290.17, Subd. 4 and Rules Part 8019 already define a unitary business, additional rules are unnecessary and duplicative.

Regulation IV.1.(c) deals with specific allocations of nonbusiness income. Minnesota did not enact the sections of the Multistate Tax Compact which deal with specific allocations and there is no statutory authority for adopting this Regulation. There-

fore this Regulation was not incorporated. Because Regulations IV.1.(b) and IV.1.(c) were not incorporated, references to them in Regulation IV.1.(a) have been deleted.

Item B. This item incorporates Regulation IV.1.(d) in its entirety. The Regulation provides that allowable deductions are applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. Deductions may be prorated among several trades or businesses or nonbusiness income if the deduction is applicable to more than one business activity. Taxpayers must also disclose any changes in the method used to prorate deductions. This rule is consistent with current Minnesota policy regarding deductions.

Item C. This item incorporates Regulation IV.2.(a)(1) which defines "taxpayer." Under the Regulations each state may insert its own definition of "taxpayer" or the definition found in Article II.3. of the Compact. This item inserts the definition found in Minnesota Statutes, section 290.171, article II.3. which is identical to that in Article II.3. of the Compact.

Item D. This item incorporates Regulation IV.2.(a)(2) in its entirety. The Regulation defines "apportionment" as the "division of business income between states by the use of a formula containing apportionment factors." This definition is consistent with the way the term is used in Minnesota Statutes, section 290.19.

Item E. This item incorporates Regulation IV.2.(a)(3), which defines "allocation" as "the assignment of nonbusiness income to a particular state," in its entirety. Again this definition is consistent with the way the term is used in Minnesota Statutes, section 290.19.

Item F. This item incorporates Regulation IV.2.(a)(4) in its entirety. The Regulation defines "business activity" as the "transactions and activity occurring in the regular

course of a particular trade or business of the taxpayer." Again, this is consistent with the way this term is used elsewhere in Minnesota Statutes.

Item G. This item incorporates Regulation IV.2.(b)(1) but changes the reference to "Article IV.9 to IV.17" of the Multistate Tax Compact to Minnesota Statutes, section 290.171, article IV.4 to IV.12. The change is necessary because in adopting the Compact, Minnesota did not enact Articles IV.4 to .8, but did enact Articles IV.9 to .18. In Article IV of Minnesota Statutes, section 290.171 all paragraphs are numbered consecutively; therefore, paragraphs 4 through 13 of Minnesota Statutes, section 290.171, article IV are identical to paragraphs 9 through 18 of Article IV of the Multistate Tax Compact. In adopting Regulation IV.2.(b)(1) it is necessary to amend the references to Article IV of the Compact so that the Regulation refers to the correct sections of Minnesota law.

The Regulation as adopted in Item G provides that if a taxpayer does business within and without Minnesota and the taxpayer is also taxable in another state, the portion of income (or loss) from the trade or business which is derived from sources within Minnesota will be determined under Minnesota Statutes, section 290.171, article IV.4. to .12. The authority for this item is Minnesota Statutes, section 290.171, article IV.4 to .12.

Item H. This item incorporates Regulation IV.2.(b)(2), which specifically allows the use of a combined report. Regulation IV.2.(b)(2) has been amended. The first amendment provides that the combined report shall reflect income only from corporations organized in the United States, or under the laws of the United States, any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States or political subdivision of the foregoing. The authority for this statement is in Minnesota Statutes, section 290.34, subd. 2. Additionally, Laws 1984, Chapter 514,

Art. 3 s. 5 made it clear that Minnesota Statutes, section 290.171, article IV, cannot be construed to permit worldwide reporting.

In addition, the reference to Article IV.9. to IV.17. of the Compact is amended to refer to the correct paragraphs of Minnesota Statutes, section 290.171, article IV. (See discussion under Item G.)

Item I. This item incorporates Regulation IV.2.(b)(3). As amended in Item I this Regulation provides that nonbusiness income shall be allocated in accordance with Minnesota Statutes, section 290.171, article IV. The original Regulation refers to Article IV.4 to .8 which Minnesota has not adopted; therefore, it is necessary to amend the Regulation accordingly. (See discussion under Item G.)

Under Minnesota Statutes, section 290.17, subd. 2(4) all income derived from a unitary business must be apportioned unless it falls into certain specific categories such as income from the operation of a farm (treated under Minnesota Statutes, section 290.17, subd. 2(2)) and income from a business consisting principally of the performance of personal and professional services (treated under Minnesota Statutes, section 290.17, subd. 2(1)).

Item J. This item incorporates Regulation IV.2.(c) in its entirety. The Regulation requires the taxpayer to treat business and nonbusiness income consistently from year to year. The returns or reports filed by the taxpayer for all states to which the taxpayer reports its income under the Compact must be uniform in the classification of income as business and nonbusiness income. This rule is consistent with Minnesota Statutes, section 290.07 which requires taxpayers to compute taxable net income in accordance with a regularly employed accounting method and to inform the commissioner of any changes in accounting methods. Consistency is necessary in order to avoid distortion of income and factors.

Item K. This item incorporates Regulation IV.3.(a) in its entirety. The Regulation sets forth criteria for determining when a taxpayer is taxable in another state. A taxpayer is taxable within a state if it meets either of the two tests set out in Minnesota Statutes, section 290.171, article IV.3. except that a taxpayer is not taxable in another state with respect to a particular trade or business if the activities being conducted in the other state pertain to nonbusiness income or business activities related to a separate trade or business. The statutory authority for this item is Minnesota Statutes, section 290.171, article IV.3.

Item L. This item incorporates Regulation IV.3.(b) in its entirety. The item sets out the criteria for determining when a corporation is "subject to" tax in another state. In general, a corporation is subject to tax if it carries on business activities in another state and that state imposes tax. The commissioner may require taxpayers who assert that they are subject to tax in another state to provide evidence to support the assertion. Filing of returns and payment of tax is prima facie evidence that the taxpayer is subject to tax in another state. If the taxpayer voluntarily files and pays tax when not required to do so or pays a minimal fee for qualification but does not engage in business activity in that state or engages in insufficient business activity to establish nexus and the minimum tax bears no relation to business activity done in the state, the taxpayer is not subject to tax. The example shows that a taxpayer who only pays a minimum tax for the privilege of doing business is not taxable if it carries on no business activity. The Regulation emphasizes the fact that only those taxes enumerated in Article IV.3.(1) of the Compact, Minnesota Statutes section 290.171, article IV.3.(1) (net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business or a corporate stock tax) shall be considered in determining whether a corporation is subject to tax. Because the purpose of the Compact is the uniform division of income among states and the avoidance of duplicative taxation, (Minnesota Statutes section 240.171, article I.4.), only those taxes which actually are designed to raise revenue on the basis of income, rather than regulatory measures,

should be considered. The four examples in Regulation IV.3.(b).(2) show that the tax must be based on actual business activity conducted or income produced even if the amount based on business activity is less than a minimum tax and the taxpayer is required to pay a minimum tax. The statutory authority for this item is Minnesota Statutes section 290.171, article IV.3.

Item M. This item incorporates Regulation IV.3.(c) in its entirety. The regulation provides that a taxpayer is taxable in another state when the taxpayer has nexus with that state. If a state is prohibited from imposing a tax under the provisions of P.L. 86-272 (the federal nexus statute) the taxpayer cannot be considered to be taxable in that state.

Item N. This item incorporates Regulation IV.9 and amends it to refer to the apportionment formula set out in Minnesota Statutes section 290.171, article IV.4, which contains the same language as Article IV.9 under the MTC numbering system. (See discussion under Item G). Item N as amended provides that business income shall be apportioned to Minnesota by use of the apportionment formula set out in Minnesota Statutes section 290.171, article IV.4.

Item O. This item incorporates Regulation IV.10.(a) in its entirety. It provides that the property factor includes all real and tangible personal property owned or rented by the taxpayer and used in the regular course of the taxpayer's business. This is consistent with current Minnesota rules and practice.

Item P. This item incorporates Regulation IV.10.(b) in its entirety. Property is included in the factor if it is actually used or is available or capable of being used in the regular course of the taxpayer's trade or business to the extent used in the trade or business. The regulation specifically provides that property held as reserves or standby facilities are included. This is consistent with the approach that only items of income and

factors actually used in the business should be included. To this end, property remains in the factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, sale or lapse of an extended period of time (5 years) during which the property is held for sale.

Item Q. Regulation IV.10.(c) is incorporated in its entirety. The regulation requires the taxpayer to use a consistent method of valuing the property or including or excluding property from the property factor. This is in accord with Minnesota's longstanding requirement that accounting methods be consistent. See Minnesota Statutes, section 290.07, subd. 2. In addition, the regulation requires the taxpayer to use uniform property valuations in the returns or reports filed with other states under Article IV of the Compact.

Item R. This item incorporates Regulation IV.10.(d) in its entirety. The average value of real and tangible personal property owned or rented and used by the taxpayer in Minnesota is included in the numerator. Property in transit between locations owned by the taxpayer is considered to be at its destination, as is property in transit between a buyer and seller. The value of mobile property is determined on the basis of total time within Minnesota during the tax period. A traveling employee's automobile is included in the numerator of the state to which the employee's compensation is assigned or to the state in which the automobile is licensed. This item provides the taxpayer with rules likely to be consistent with rules in other states which have adopted UDITPA or which use the MTC Rules.

Item S. This item incorporates Regulation IV.11.(a) in its entirety. The regulation provides that owned property is valued at original cost and provides three examples. This treatment is consistent with the Department's treatment of property in Minnesota Rules Part 8017.3000, Subp. 5. Regulation IV.11.(a) is adopted in order to clarify how taxpayers using Minnesota Statutes, section 290.171, article IV should value property.

Item T. Regulation IV.11.(b) is incorporated in its entirety. The regulation provides that rented property is valued at eight times the net annual rental rate less aggregate subrentals. This treatment is consistent with the Department's policy as stated in Minnesota Rules Part 8017.3000, Subp. 5. Although present Department Rules specify that rented property is valued at eight times the net annual rental rate, this item is necessary to make it clear that taxpayers apportioning income under Minnesota Statutes, section 290.171, article IV must use this method also.

Item U. Regulation IV.12 is incorporated in its entirety. As a general rule, the average value of property owned by the taxpayer is determined by averaging the values at the beginning and ending of the tax period. This is consistent with current Department policy as set forth in Minnesota Rules Part 8017.3000, Subp. 5. It is necessary to incorporate this Regulation to make it clear that taxpayers who apportion income under Minnesota Statutes, section 290.171, article IV should determine their payroll factor in the same way.

Item V. Regulation IV.13.(a) which deals with the payroll factor in general is incorporated in its entirety. The payroll factor includes the total amount paid by the taxpayer, in the regular course of business, for compensation during the tax period with the amount "paid" determined on the basis of the taxpayer's accounting method. This is consistent with current Department policy as set forth in Minnesota Rules Part 8017.3000, Subp. 6. Again, it is necessary to incorporate this Regulation to make it clear that taxpayers who apportion income under Minnesota Statutes, section 290.171, article IV should determine their payroll factor in the same way.

Item W. This item incorporates Regulation IV.13.(b) in its entirety. The regulation states that the denominator consists of total compensation paid everywhere. However, due to the operation of Laws 1984 C.514 Art 3. s. 5 compensation paid is limited to

compensation paid in the United States, the commonwealth of Puerto Rico or any possession of the United States. This is consistent with Department policy.

Item X. This item incorporates Regulation IV.13.(c) but changes the reference in the Regulation to "Article IV.14" to read "Minnesota Statutes, section 290.171, article IV.9." This is necessary to avoid confusion and make the Regulations consistent with Minnesota Statutes, section 290.171, article IV. Article IV.14 of the Regulations contains language identical Article IV.9 of Minnesota Statutes section 290.171. See discussion under Part G.

The Regulation provides that in general the numerator of the payroll factor is the total amount paid for compensation in Minnesota. Amounts paid in Minnesota should equal the amounts reported to Minnesota for unemployment compensation purposes.

Item Y. Regulation IV.14 is incorporated in its entirety. This regulation sets up several tests used to determine whether compensation is paid in Minnesota. The rule is necessary because it gives the taxpayer detailed guidelines for determining whether sales are in Minnesota. In addition, these guidelines are consistent with the treatment afforded by other states which use the MTC allocation and apportionment provisions. In general if the employee's services are performed in Minnesota, the employee is directed or controlled from Minnesota and there is no base of operations in any state in which services are performed or the employee has a base of operations in Minnesota, the employee's compensation is paid within Minnesota. If the base of operations or the place where the employee is directed or controlled is not in any state where services are performed, compensation is paid in the state where the employee resides.

Item Z. This item incorporates Regulation IV.15.(a) but amends the reference to "paragraphs (5) through (8) of Article IV" to refer to the applicable section of Minnesota law. This is done to avoid confusion by making sure that the incorporated

regulation refers to the correct section of Minnesota law. (See discussion under Item G.) This regulation deals with the sales factor and sets forth rules for determining what is included in the term "sales." There is no counterpart to this rule in current Minnesota Rules; however, this rule is needed to provide taxpayers who use the MTC Allocation and Apportionment Provisions with a method of determining sales which is likely to be consistent from state to state in other states which have adopted the Multistate Tax Compact.

Item AA. Regulation IV.15(b) is incorporated in its entirety. The regulation provides that the denominator of the sales factor includes total gross receipts derived in the regular course of the taxpayer's trade or business. This item affords the taxpayer with a method of determining its sales factor which is likely to be consistent from state to state in states which have adopted the Multistate Tax Compact.

Item BB. This item incorporates Regulation IV.15.(c) in its entirety. The regulation deals with the numerator of the sales factor which includes all gross receipts attributable to Minnesota and derived from transactions and activity in the regular course of business. Again, this item will allow taxpayers a uniform method of determining their sales factor when using the MTC Allocation and Apportionment formulas in several states. Minnesota Statutes section 290.171, article IV.1(g) defines "sales" to mean all gross receipts not allocated under Article IV.

Item CC. Regulation IV.16.(a) is incorporated in its entirety. This regulation sets out the MTC definition of sales of tangible personal property within Minnesota. Unlike Minnesota law and rules, this regulation contains a throwback rule. Several examples are provided. This rule is necessary because taxpayers who elect to use the MTC's allocation and apportionment provisions in several states should have consistent treatment from state to state. In addition, the throwback rule is reasonable in that it avoids the situation where sales are in neither the numerator or denominator of the

sales factor of any state. Minnesota Statutes section 290.171, article IV.11.(b) contains a throwback rule. Only taxpayers who have their income apportioned under the MTC allocation and apportionment provisions (Minnesota Statutes section 290.171, article IV) will be subject to the throwback rule. Taxpayers not so electing will be subject to Minnesota Statutes sections 290.17 and 290.19 which do not contain a throwback rule.

Item DD. Regulation IV.16.(b) is incorporated in its entirety. The regulation provides that sales of tangible personal property to the U.S. government are in Minnesota if the property is shipped from an office, store, warehouse, factory or other place of storage in Minnesota. Minnesota Rules currently offer no such treatment. The statutory authority for this rule is Minnesota Statutes section 290.171, article IV.11.(b). For taxpayers electing to apportion their income under the MTC Allocation and Apportionment provisions, adoption of this regulation affords them a consistent method of figuring out their sales factor among all the states which they report to under the MTC allocation and apportionment provisions.

Item EE. Regulation IV.17 is incorporated and amended so that it refers to the correct section of Minnesota law. See discussion under Item G.

Regulation IV.17 explains how gross receipts from transactions other than sales of tangible personal property are included in the numerator of the sales factor. Minnesota Statutes section 290.171, article IV.12 requires that sales other than sales of tangible personal property are in Minnesota if a) the income producing activity is performed in Minnesota or b) the income-producing activity is performed both inside and outside Minnesota and a greater proportion of such activity is performed within Minnesota based on costs of performance. The rule defines "income producing activity" and "costs of performance" and provides rules for determining when receipts from income producing activities are in Minnesota. Incorporation of this regulation

will affordtaxpayers who elect to apportion income under the MTC allocation and apportionment formula a uniform system of determining their sales factor.

Item FF. This item incorporates Regulation IV.18.(a). The regulation is amended to make it clear that combined reports shall reflect income only from corporations created or organized in the United States, District of Columbia, Puerto Rico and any possession of the United States. Minnesota does not permit worldwide apportionment and it is not permitted under section 290.171. See discussion under Item H. The references to "Article IV" are amended to refer to the correct paragraphs of Minnesota Statutes section 290.171, article IV. (See discussion under Item G). Regulation IV.18.(a) permits the use of other methods of apportionment if the allocation and apportionment methods of Article IV do not fairly represent the taxpayer's business activities in Minnesota. This is consistent with current practice under Minnesota Statutes section 290.20.

Item GG. Regulation IV.18.(b) is incorporated in its entirety. The regulation provides that if subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value another method which properly reflects the value of rented property may be required by the commissioner or requested by the taxpayer. This treatment is identical to that set forth in Minnesota's current Rules, Part 8017.3000, Subp. 5. It is necessary to incorporate this regulation to make it clear that taxpayers who apportion income under Minnesota Statutes section 290.171, article IV should treat subrents in the same way.

Item HH. Regulation IV.18.(c) is incorporated in its entirety. This regulation provides for special rules with respect to the sales factor when income arises from an incidental or occasional sale of fixed assets in the ordinary course of the taxpayer's business. This rule provides that taxpayers electing to use the MTC allocation and apportionment formula in more than one state will be able to treat such sales uniformly.

Subp. 2 Construction Contractors. This subpart deals with long-term construction contractors who elect to apportion their income under the Multistate Tax Compact. These taxpayers are subject to MTC Construction Contractor Regulation IV.18.(d), as modified by this subpart. As in subpart 1, construction contractors electing to be taxed under the MTC allocation and apportionment provisions are likely to use the MTC formula in other states and need a consistent method of determining their income from state to state.

In general, the regulation provides that long-term construction contractors' apportionable income is determined using a three-factor formula. Contractors may elect to use either the percentage of completion method or the completed contract method. This is consistent with Minnesota's current policy.

Item A. This item amends clause (1) of MTC Regulation IV.18.(d) so that it refers to the correct section of Minnesota law. "Article IV.1" is amended to read "Minnesota Statutes, section 290.171, article IV." Because MTC Regulations IV.1.(b) and IV.1.(c) have not been incorporated (see discussion under Subpart 1, Item A) references to them in this subpart have been deleted.

Item B. This item amends the third sentence in clause (1) to refer to the correct sections of Minnesota statutes (see discussion under Subp. 1, Item A).

Item C. This item amends Clause (2) of the regulation to delete references to Regulation IV.1.(b) and (c) which have not been incorporated. See discussions under Subp. 1, Item A.

Item D. Clause (3) is amended to refer to Minnesota's current law and policy concerning general rules of accounting, definitions and methods of accounting for long-term

construction contracts. The regulation provides that each state adopting it will insert its own definitions.

Items E - G. These items amend paragraphs (4)(iv), (4)(v) and (4)(iv), so that they refer to the correct sections of Minnesota law. See discussion under Subp. 1, Item A.

Subp. 3 Railroads. This subpart incorporates MTC Regulation IV.18.(f) by reference. This regulation applies to taxpayers who elect to be taxed under the MTC allocation and apportionment provisions as codified in Minnesota Statutes section 290.171, article IV. As with Subpart 1, the incorporation of this regulation will provide taxpayers who use the MTC formula in other states and elect to do so in Minnesota with a consistent method of determining their income. See discussion under Subp. 1, Item A.

Because the property of railroads is typically composed of movable property, special rules are needed.

MTC Regulation IV.18.(f) is amended as follows:

Item A. Because MTC Regulations IV.1.(b) and IV.1.(c) have not been incorporated (See discussion under Subpart 1, Item A) references to Regulation IV.1.(b) and IV.1.(c) in this subpart have been deleted.

Item B. The third sentence of clause (1) is amended to refer to the correct sections of Minnesota Statutes. See discussion under Subpart 1, Item A.

Item C. This item amends Clause (2) of the Regulation by deleting references to Regulation IV.1.(b) and IV.1.(c) which have not been incorporated. See discussions under Subp. 1, Item A.

Items D - J. These items amend Regulation IV.18.(f) to refer to the correct sections of Minnesota Statutes. See discussion under Subpart 1, Item A.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX DIVISION

IN THE MATTER of the Proposed Adoption of New Rules Relating to the Taxation of a Unitary Business and Formulary Apportionment Under the Multistate Tax Compact (Minnesota Rules Part 8017.5000)

STATEMENT OF COMPLIANCE WITH RULE MAKING PROCEDURES

I, Harriet J. Sims, Corporation Income Tax Attorney, do hereby declare that I have examined the rules and all related documents and that, based on my examination and personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. There are no exceptions.

Harriet J. Sims

Dated: June 25, 1985

HJS:Gun